

Übersetzung durch den Sprachendienst des Bundesministeriums für Arbeit und Soziales.  
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Version information: The translation includes the amendment(s) to the Act by Article 6d of the Act of 16 September 2022 (Federal Law Gazette p. 1454)

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## **Works Constitution Act**

### **(Betriebsverfassungsgesetz - BetrVG)**

Works Constitution Act of 25 September 2001 (Federal Law Gazette I, p. 2518), as amended by Article 6d of the Act of 16 September 2022 (Federal Law Gazette p. 1454)

#### **Part One** **General provisions**

##### **Section 1** **Establishment of works councils**

(1) Works councils are elected in all establishments that normally have five or more permanent employees with voting rights, including three who are eligible. The same applies to joint establishments of several companies.

(2) A joint establishment of several companies is assumed to exist if

1. the companies employ the equipment and employees jointly in order to pursue their working objectives, or
2. splitting a company would have the effect that one or several departments of an establishment would be allocated to another company that is involved in the split, without thereby fundamentally changing the organisation of the establishment concerned.

##### **Section 2** **Status of trade unions and employers' associations**

(1) The employer and the works council work together in a spirit of mutual trust having regard to the applicable collective agreements and in co-operation with the trade unions and employers' associations represented in the establishment for the good of the employees and of the establishment.

(2) In order to permit the trade unions represented in the establishment to exercise the powers and duties established by this Act, their agents, after notification of the employer or his representative, are to be granted access to the establishment, in so far as this does not run counter to essential operational requirements, mandatory safety rules or the protection of trade secrets.

(3) This Act does not affect the functions of trade unions and employers' associations and more particularly the representation of their members' interests.

##### **Section 3** **Different arrangements**

(1) The following may be determined by collective agreements:

1. for companies comprising several establishments
  - a) the formation of a uniform works council for the company, or
  - b) the combination of companies or establishments

if the formation of works councils is thereby facilitated, or if this combination serves the appropriate safeguarding of the employees' interests;

2. for companies and combines, to the extent that they have been organised according to product- or project-specific divisions (branches) and the branch management also makes decision concerning issues that require participation, the formation of works councils for the branches (branch works councils), if this arrangement serves to appropriately carry out the works council's duties;
3. other employees' representation structures to the extent that these structures serve an efficient and appropriate representation of employees' interests, in particular, because of the organisation of the establishment, company, or combine, or because of other types of cooperation between companies;
4. additional bodies under the Works Constitution Act (working groups) that serve for the inter-company co-operation of employees' representations;
5. additional employees' representations under the Works Constitution Act that facilitate cooperation between the works council and the employees.

(2) If no provisions are included in a collective agreement that cover the cases listed in paragraph (1) no. 1, 2, 4, or 5, and if no other collective agreement is available, such an arrangement can be agreed upon in a works agreement.

(3) If no provisions are included in a collective agreement that cover the case described in paragraph (1) no. 1 letter a), and if there is no works council in the establishment, a majority of employees can resolve to elect a uniform works council. This vote can be initiated by a minimum of three employees with voting rights employed by the establishment, or by a trade union represented in the establishment.

(4) Unless provided otherwise in the collective agreement or the works agreement, the arrangements specified in paragraph (1) no. 1 to 3 are to be applied for the first time in the course of the next regular works council elections, unless no works council exists, or unless the works council has to be re-elected for other reasons. If the collective agreement or the works agreement provides for another voting time, the term of office of existing works councillors, who will become obsolete under paragraph 1 no. 1 to 3 terminate upon announcement of the election results.

(5) The organisation units under the Works Constitution Act, which were established on the basis of a collective agreement or a plant-level agreement in accordance with paragraph 1 no. 1 to 3, are considered establishments for the purposes of this Act. The provisions concerning the rights and obligations of the works council and the legal position of its members are applicable to the employees' representations formed therein.

#### **Section 4**

##### **Separate departments, very small establishments**

(1) Separate departments of establishments are regarded as independent establishments if they meet the conditions laid down in section 1 (1) sentence 1 and

1. are situated at a considerable distance from the principal establishment, or
2. are independent by reason of their function and organization.

The employees of a separate department, in which no separate works council exists, may resolve by a simple majority of votes and without complying with a special form that they will participate in the works council elections of the principal establishment; section 3 (3) sentence 2 applies accordingly. The vote may also be initiated by the works council of the principal establishment. The resolution is to be communicated to the works council of the principal establishment not later than ten weeks before expiry of its term of office. Sentence 2 to 4 of this paragraph apply accordingly to the revocation of the resolution.

(2) Establishments that do not meet the conditions laid down in section 1 (1) sentence 1 are treated as part of the principal establishment.

## **Section 5 Employees**

(1) In this Act the term “employee” (male and female) comprises wage earners and salaried employees including persons employed for the purpose of their vocational training, regardless of whether they are engaged in indoor work, in field service, or in tele-work. The term includes persons engaged in home work who work principally for one and the same establishment. Furthermore, (female and male) civil servants, (female and male) soldiers and employees of the public service, including persons employed for the purpose of their vocational training, are considered “employees” if they work in establishments organised under private law.

(2) The following are not to be considered as employees for the purposes of this Act:

1. in establishments belonging to a corporation, the members of the organs that are legally empowered to represent the corporation;
2. partners in an ordinary commercial partnership or members of another association of persons in the establishment belonging to the partnership or association, in so far as they are empowered by law, its own by-laws or the articles of association to represent the association or to exercise management functions;
3. persons whose employment is not primarily for the purpose of earning their livelihood but is chiefly inspired by charitable or religious motives;
4. persons whose employment is not primarily for the purpose of earning their livelihood but principally for their cure or recovery, rehabilitation, moral improvement or education;
5. the spouse, the life partner, as well as the relatives by blood or marriage of the first degree living with the employer.

(3) Unless this Act expressly provides to the contrary, it does not apply to executive staff. Executive staff are employees who, under their contract of employment and by their status in the company or establishment,

1. are entitled on their own responsibility to engage and dismiss employees on behalf of the establishment or one of its departments; or
2. are endowed with general authority (power of procuration) or full power of representation or power to sign, the latter also being important in relation to the employer; or
3. regularly carry out other duties which are important for the existence and development of the company or an establishment and fulfilment of which requires particular experience and knowledge, if, in doing so, they either essentially make decisions on their own responsibility or substantially influence these decisions; this may also be the case with stipulated procedures, particularly those based on legal provisions, plans or guidelines and when cooperating with other executive staff.

Sentence 1 and 2 apply accordingly to the civil servants and soldiers referred to in paragraph 1 sentence 3.

(4) In case of doubt, executive staff under paragraph (3) no. 3, are employees who

1. have been assigned to the executive staff on the occasion of the last election of the works council, the executives' committee or of supervisory board members of the employees or by means of a final and conclusive legal decision; or
2. belong to a management level at which executive staff are predominantly represented in the company; or
3. regularly receive an annual salary which is customary for executive staff in the company; or
4. if there is still doubt on application of no. 3, regularly receive an annual salary which is three times greater than the reference figure as per section 18 of Book Four of the Social Code.

## **Section 6 (cancelled)**

### **Part Two**

## **Works council, works meeting, central works council and combine works council**

### **Division One**

## **Composition and election of the works council**

### **Section 7 Voting rights**

All employees of the establishment who are 16 years of age or over have voting rights. If employees of another employer are hired out for work, they are entitled to vote if they are assigned to the establishment for more than three months.

### **Section 8 Eligibility**

(1) All employees with voting rights who are 18 years of age or over and have been employed in or principally worked for the establishment as homeworkers for six months are eligible to the works council. The said period of six months is deemed to include any immediately preceding period during which the employee was employed in another establishment belonging to the same company or combine as defined in section 18 (1) of the Joint Stock Act. Persons who by court judgement have been declared ineligible or debarred from holding public office are ineligible to works councils.

(2) If the establishment has been in existence for less than six months, such employees as are employed in the establishment and fulfil the other conditions for eligibility at the announcement of the election for the works council are eligible notwithstanding the requirement of six months' service under paragraph (1).

### **Section 9 Number of members of the works council<sup>1</sup>**

The membership of the works council is as follows, according to the number of employees with voting rights normally employed in the establishment:

- 5 to 20 employees entitled to vote: 1 person,
- 21 to 50 employees entitled to vote: 3 members,
- 51 to 100 employees entitled to vote: 5 members,
- 101 to 200 employees: 7 members,

201 to 400 employees: 9 members,  
401 to 700 employees: 11 members,  
701 to 1000 employees: 13 members,  
1001 to 1500 employees: 15 members,  
1501 to 2000 employees: 17 members,  
2001 to 2500 employees: 19 members,  
2501 to 3000 employees: 21 members,  
3001 to 3500 employees: 23 members,  
3501 to 4000 employees: 25 members,  
4001 to 4500 employees: 27 members,  
4501 to 5000 employees: 29 members,  
5001 to 6000 employees: 31 members,  
6001 to 7000 employees: 33 members,  
7001 to 9000 employees: 35 members.

In establishments employing more than 9,000 employees the number of members of the works council is increased by two members for every additional fraction of 3,000 employees.

**Footnote 1:** In accordance with Article 14 sentence 2 of the Act Reforming the Works Constitution Act (Gesetz zur Reform des Betriebsverfassungsgesetzes - Gesetz BetrVerf-Reformgesetz) of 23 July 2001 (Federal Gazette, Part I p. 1852), Section 9 (Article 1 no. 8 of the Act Reforming the Works Constitution Act) is not applicable to a works council prior to its re-election if it had been in office when the Act became effective.

#### **Section 10 (cancelled)**

#### **Section 11**

##### **Reduction in the number of works council members**

If the number of eligible employees in an establishment is insufficient, the number of members in the works council is the one specified for the next lower size of establishment.

#### **Section 12 (cancelled)**

#### **Section 13**

##### **Time of elections to the works council**

(1) Regular elections to the works council are held every four years at some time between 1 March and 31 May. They are to be held at the same time as the regular elections in accordance with section 5 (1) of the Executives' Committee Act.

(2) Elections to the works council are to be held outside this period whenever –

1. by the end of twenty-four months from the date of the last election, the number of employees regularly employed has increased or decreased by one half but by not less than fifty in any case;
2. the total membership of the works council, after all the substitutes have been called upon, has fallen below the prescribed number;
3. the works council decides to resign by the vote of a majority of its members;

4. the works council election results are successfully contested;
5. the works council is dissolved by court order; or
6. there is no works council in the establishment.

(3) If an election for a works council has been held outside the period set aside for regular works council elections, a new election is to be held in the next immediately following period for regular elections for the works council. If at the beginning of the period fixed for regular elections the works council has been in office for less than a year, the new works council elections are to be held in the regular election period that follows.

#### **Section 14 Election rules**

- (1) The works council is elected directly by secret ballot.
- (2) The election is conducted according to the principles of proportional representation. If only one list of candidates is submitted, or if the works council is to be elected according to the simplified electoral procedure specified in section 14a, the election is conducted according to the principles of majority representation.
- (3) Employees with voting rights and trade unions represented in the establishment are entitled to submit lists of candidates for the works council elections.
- (4) In establishments with, as a rule, up to 20 employees entitled to vote, the list of candidates does not have to be signed. In establishments with, as a rule, 21 to 100 employees entitled to vote, the list of candidates has to be signed by at least two employees entitled to vote, and in establishments with, as a rule, more than 100 employees entitled to vote, the list of candidates has to be signed by at least one-twentieth of the employees entitled to vote. The signatures of 50 employees entitled to vote suffices in all cases.
- (5) Each list of candidates from a trade union must be signed by two representatives.

#### **Section 14a Simplified electoral procedure for small establishments**

- (1) Works councils are elected in a two-step process in establishments that normally have five to 100 employees with voting rights. The electoral board pursuant to section 17a no. 3 is elected at an initial election meeting. The works council is elected directly by secret ballot at a second election meeting. This election meeting takes place one week after the election meeting in which the electoral board was elected.
- (2) Lists of candidates may be submitted until the end of the election assembly in which the electoral board is elected pursuant to section 17a no. 3 and section 14 (4) is applicable to employees' lists of candidates with the proviso that lists of candidates submitted at this election meeting need not be submitted in writing.
- (3) Notwithstanding paragraph (1) sentence 1 and 2, if the electoral board of establishments that normally have five to 100 employees entitled to vote has been appointed by the works council, the central works council or the combine works council pursuant to section 17a no. 1 in conjunction with section 16 or by the labour court pursuant to section 17a no. 4, the works council is elected directly by secret ballot at a single election meeting only. Lists of candidates may be submitted not later than one week before the election meeting in which the works council is elected; section 14 (4) is not affected.
- (4) Those employees with voting rights who cannot participate in the election meeting in which the works council is elected are to be given the opportunity to cast their votes in writing.
- (5) In establishments that normally have 101 to 200 employees with voting rights the electoral board and the employer may agree on the application of the simplified electoral procedure.

#### **Section 15 Representation of employment categories and of male and female employees\***



(1) The works council is to be composed as far as possible of employees of the various organisation units and the different employment categories of the employees employed in the establishment.

(2) The gender that accounts for a minority of staff must at least be represented according to its relative numerical strength whenever the works council consists of three or more members.

**Footnote** \*: In accordance with Article 14 sentence 2 of the Act Reforming the Works Constitution Act (Gesetz zur Reform des Betriebsverfassungsgesetzes - GesetzBetrVerf-Reformgesetz) of 23 July 2001 (Federal Gazette, Part I p. 1852), Section 15 (Article 1 no. 13 of the Act Reforming the Works Council Act (Gesetz zur Reform des Betriebsverfassungsgesetzes - GesetzBetrVerf-Reformgesetz) is not applicable to a works council prior to its re-election if it had been in office when the Act became effective.

### **Section 16**

#### **Appointment of the electoral board**

(1) Not less than ten weeks before the end of its term of office, the works council appoints an electoral board of three persons with voting rights, one of whom is the chairperson. The works council may increase the number of members on the electoral board if the proper conduct of the election so requires. In all cases the electoral board must consist of an odd number of members. A substitute may be appointed for each member of the electoral board in order to replace him in his or her absence. In establishments with male and female employees, the electoral board is to comprise women and men. Each trade union represented in the establishment may, in addition, delegate a representative belonging to the establishment to the electoral board as a non-voting member, insofar as no voting member of the electoral board belongs to the trade union involved.

(2) If no electoral board has been appointed by the beginning of the eighth week before the end of the term of office of the works council, it is appointed by the labour court on application from three or more persons with voting rights or a trade union represented in the establishment. The preceding paragraph applies accordingly. The application may contain proposals as to the composition of the electoral board. In the case of establishments that normally employ more than twenty employees with voting rights the labour court may also appoint as members of the electoral board persons who are not employed in the establishment but belong to a trade union represented in the establishment, if the proper conduct of the election so requires.

(3) If no electoral board has been appointed by the beginning of the eighth week before the end of the term of office of the works council, the central works council or, in the absence of the latter, the combine works council may appoint the electoral board. Paragraph (1) applies accordingly.

### **Section 17**

#### **Appointment of the electoral board in establishments without a works council**

(1) If an establishment that fulfils the conditions of section 1 (1) sentence 1 has no works council, an electoral board is appointed by the central works council or, in the absence of the latter, the combine works council. Section 16 (1) applies accordingly.

(2) If there is neither a central works council nor combine works council, an electoral board is elected at a works meeting of the employees on a majority vote of those present; section 16 (1) applies accordingly. The same applies if the central works council or combine works council fails to appoint the electoral board as stipulated in paragraph (1).

(3) Such works meeting may be called by three employees of the establishment with voting rights or a trade union represented in the establishment; in doing so, the said employees or trade union may make proposals as to the composition of the electoral board.

(4) If a works meeting thus called is not held or fails to elect an electoral board, the board is appointed by the labour court on application from three or more persons with voting rights or a trade union represented in the establishment. Section 16 (2) applies accordingly.

### **Section 17a**

#### **Appointment of the electoral board in the simplified electoral procedure**

If section 14a is applicable, sections 16 and 17 apply with the following modifications:

1. The period referred to in section 16 (1) sentence 1 is reduced to four weeks and the period referred to in section 16 (2) sentence 1 and paragraph (3) sentence 1 to three weeks.
2. Section 16 (1) sentence 2 and 3 does not apply.
3. If section 17 (2) is applicable, the electoral board is elected at an election meeting by the majority of the employees present. Section 17 (3) applies accordingly to the calling of the election meeting.
4. Section 17 (4) applies accordingly if no election meeting takes place although it has been properly convened, or if no electoral board was elected at the election meeting.

### **Section 18**

#### **Preparation and conduct of the election**

- (1) The electoral board has to call the election without delay, carry it out and announce the results. If the electoral board fails to carry out this duty, the labour court acts in its place on application of the works council, of three or more employees with voting rights or a trade union represented in the establishment. Section 16 (2) applies accordingly.
- (2) If there is any doubt as to whether an organisation unit qualifies for having a works council, the employer, any interested electoral board member or a trade union represented in the establishment is entitled to apply to the labour court for a decision.
- (3) Directly after termination of the election the electoral board counts the votes in public, records the results in writing and announces them to the employees of the establishment. A copy of the election records has to be sent to the employer and the trade unions represented in the establishment.

### **Section 18a**

#### **Allocation of executive staff for elections**

- (1) If the elections are to be held at the same time in accordance with section 13 (1) and section 5 (1) of the Executives' Committee Act (Sprecherausschussgesetz), the electoral boards notify each other immediately after preparation of the voters' lists, but not later than two weeks prior to the start of the elections, which salaried employees have been allocated to the executive staff; this also applies if the elections are held at the same time without the existence of a legal obligation. Insofar as there is no agreement between the electoral boards regarding this allocation, an attempt must be made to reach an agreement in a joint meeting. Insofar as agreement is reached, the salaried employees are to be entered in the appropriate voters' list in accordance with their allocation.
- (2) Insofar as no agreement is reached, a mediator has to make a renewed attempt to achieve agreement between the electoral boards regarding allocation, this occurring not less than one week before the start of the elections. The employer has to support the mediator at his or her request, particularly by providing the necessary information and documentation. If this attempt to reach agreement fails, the mediator decides after consultation with the employer. Paragraph (1) sentence 3 applies accordingly.
- (3) The electoral boards must agree on the mediator. Only an employee of the establishment or of another establishment of the company or combine, or the employer may be appointed as mediator. If no agreement is reached, the electoral boards each propose one person as a mediator; the casting of lots decides who will act as mediator.
- (4) If an election in accordance with the Executives' Committee Act is not held at the same time as the election in accordance with section 13 (1) or (2), the electoral board has to notify the executives' committee in accordance with paragraph (1) sentence 1 clause 1. If there is



disagreement regarding allocation, the executives' committee has to appoint members to participate in the allocation procedure in lieu of the electoral board. If an election in accordance with this Act is not held at the same time as the election in accordance with section 5 (1) or (2) of the Executives' Committee Act, sentence 1 and 2 apply to the works council accordingly.

(5) Recourse to the courts of law is not excluded by the allocation. Contestation of the works council election or the election in accordance with the Executives' Committee Act is excluded, insofar as it is based on the claim that the allocation was incorrect. Sentence 2 does not apply if the allocation is patently incorrect.

### **Section 19 Contesting of elections**

(1) An election may be contested before the labour court, if any of the essential rules respecting the right to vote, eligibility or electoral procedure have been infringed and no subsequent correction has been made, unless the infringement could not have altered or influenced the election results.

(2) Such contestation may be made by any three or more persons with voting rights, a trade union represented in the establishment or the employer. To be receivable the action must be brought within two weeks of the announcement of the election results.

(3) Contestation by the employees entitled to vote is excluded insofar as it is based on the incorrectness of the list of candidates unless an objection has been lodged to the correctness of the list of candidates before for the same reason. This does not apply if the contesting employees entitled to vote were prevented from lodging an objection. Contestation by the employer is excluded if it is based on the incorrectness of the list of candidates and if this incorrectness is based on the employer's information.

### **Section 20 Protection against obstruction and costs of the election**

(1) No person may obstruct the election of a works council. In particular, no employee may be restricted in his right to vote or to stand for election.

(2) Any attempt to influence a works council election by inflicting or threatening any unfavourable treatment or by granting or promising any advantage is unlawful.

(3) The costs of the election are borne by the employer. Any loss of working time entailed by voting, performance of duties on the electoral board or activity as a mediator (section 18a) does not give the employer a right to reduce the remuneration.

## **Division Two Term of office of the works council**

### **Section 21 Term of office**

The regular term of office of a works council is four years. It runs from the announcement of the election results or, if a works council is still in office at that date, from the end of the term of office of that council. The term of office expires not later than 31 May of the year in which the regular works council elections are to be held under section 13 (1). In the case covered by section 13 (3) sentence 2 the term of office ends not later than 31 May of the year in which a new works council is to be elected. In the cases covered by section 13 (2), no. 1 and 2, the term of office ends on the announcement of the election results giving the newly elected works council.

### **Section 21a Transitional mandate\***

(1) If an establishment is split up, its works council continues in office and conducts the day-to-day business for the departments assigned to it, provided that they meet the conditions laid down in section 1 (1) sentence 1 and are not integrated into an establishment which has a works council (transitional mandate). In particular, the works council must immediately

appoint electoral boards. The transitional mandate ends as soon as a new works council has been elected in the departments and the election results have been announced, but in any case not later than six months after the split has become effective. The transitional mandate may be extended by six more months by a collective agreement or works agreement.

(2) If establishments or departments are combined into one establishment, the works council of the largest establishment or department in terms of number of employees with voting rights holds the transitional mandate. Paragraph (1) applies accordingly.

(3) Paragraphs 1 and 2 are also applicable if establishments or departments are split up or combined in the course of a divestiture or a transformation in accordance with the Act Regulating Transformation of Companies (Umwandlungsgesetz).

**Footnote \*:** This provision serves to implement Article 6 of Council Directive 2001/23/EEC of March 12, 2001, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ EEC No. L 82 p. 16).

#### **Section 21b** **Residual mandate**

If an establishment is shut down, split up or combined with others and therefore ceases to exist, its works council continues in office for as long as it is necessary to safeguard the rights to participate and of co-determination existing in this context.

#### **Section 22** **Continuation in office of the works council**

In the cases covered by section 13 (2), no. 1 to 3, the works council continues in office until the new works council has been elected and the election results have been announced.

#### **Section 23** **Violation of statutory duties**

(1) One-fourth or more of the employees with voting rights or the employer or a trade union represented in the establishment may apply to the labour court for an order to remove from office any member of the works council or to dissolve the council on the grounds of grave dereliction of its statutory duties. The works council itself may also apply for the removal of a member.

(2) Where a works council is dissolved, the labour court without delay appoints an electoral board for a fresh election. Section 16 (2) applies accordingly.

(3) Where the employer has grossly violated his or her duties under this Act, the works council or a trade union represented in the establishment may apply to the labour court for an order to the employer enjoining him to cease and desist from an act, allow an act to be performed or perform an act. If the employer does not obey an executory court order to cease and desist from an act or allow an act to be performed, the labour court, on application and after prior warning, is to impose a fine on him or her for each such violation. If the employer does not carry out an act imposed on him or her by an executory court order, the labour court, on application, has to give a decision that he or she is made to perform the act imposed on him or her subject to payment of fines. Such application may be made by the works council or by a trade union represented in the establishment. The maximum amount of the fine is 10,000 euros.

#### **Section 24** **Termination of membership**

(1) Membership of the works council is terminated by –

1. expiry of the term of office;
2. resignation from the works council;
3. termination of the contract of employment;

4. loss of eligibility;
5. removal from office or dissolution of the works council by court order;
6. a court order relating to the determination of non-eligibility after the expiry of the time limit referred to in section 19 (2) unless the grounds for non-eligibility are found to be nonexistent.

#### **Section 25 Substitutes**

(1) Whenever a member leaves the works council he or she is replaced by a substitute. The foregoing applies accordingly to the replacement of a member of a works council who is temporarily unable to act.

(2) The substitutes are taken in turn from the unelected employees on the same candidate lists as the members who are to be replaced, having regard to section 15 (2). After all persons on one list of candidates have been taken, the substitute is to be taken from the candidate list from which the next seat would be filled in accordance with the principles of proportional representation. If the member who is leaving or unable to act was elected on the principles of majority representation, the sequence of the substitutes is in accordance with the number of votes obtained, having regard to section 15 (2).

### **Division Three Conduct of business of the works council**

#### **Section 26 Chairperson**

(1) The works council elects two of its members as chairperson and vice-chairperson.

(2) The chairperson of the works council or, if he or she is unable to act, the vice-chairperson represents the works council subject to the decisions adopted by the council. The chairperson of the works council or, if he or she is unable to act, the vice-chairperson has the right to receive statements to be submitted to the works council.

#### **Section 27 Works committee**

(1) If a works council consists of nine or more members, it sets up a works committee. The works committee consists of the chairperson of the works council, the vice-chairperson, as well as, in works councils with

9 to 15 members: 3 additional committee members,

17 to 23 members: 5 additional committee members,

25 to 35 members: 7 additional committee members,

37 or more members: 9 additional committee members,

The additional committee members are elected from its midst by the works council in a secret ballot and in accordance with the principles of proportional representation. If only one list of candidates is proposed, the ballot is carried out in accordance with the principles of the majority vote. If the additional committee members are elected in accordance with the principles of proportional representation, they are removed from office by a decision of the works council, taken in a secret ballot and requiring a majority of three-quarters of the votes of the works council members.

(2) The works committee deals with the day-to-day business of the works council. The works council may by majority vote of its members delegate tasks to the works committee for independent action; the foregoing does not apply to the negotiation of works agreements. Such delegation of tasks must be recorded in writing. Sentence 2 and 3 of this paragraph apply accordingly to the revocation of such delegation of tasks.

(3) A works council consisting of less than nine members may delegate day-to-day business to its chairperson or others of its members.

### **Section 28**

#### **Assignment of tasks to committees**

(1) In establishments with more than 100 employees, the works council may establish additional committees and assign them specific tasks. Section 27 (1) sentence 3 to 5 apply accordingly to the election and removal from office of the committee members. Once a works committee has been set up the works council may assign tasks for autonomous action to the committees; section 27 (2) sentence 2 to 4 apply accordingly insofar as these tasks are assigned to them for independent action.

(2) Paragraph 1 applies accordingly to the delegation of tasks for independent action to works council members on joint committees whose members are appointed by the works council and by the employer.

### **Section 28a**

#### **Assignment of tasks to working groups**

(1) In establishments with more than 100 employees, the works council may by majority vote of its members delegate certain tasks to working groups, such delegation of tasks being subject to a framework agreement to be made with the employer. The tasks have to be linked to the activities to be performed by the working group. Such delegation of tasks must be recorded in writing. Sentence 1 clause 1 and sentence 3 apply accordingly to the revocation of such delegation of tasks.

(2) The working group may, within the scope of the tasks delegated to it, make agreements with the employer; such an agreement requires a majority vote of the group's members. Section 77 applies accordingly. If the employer and the working group do not reach an agreement on a certain matter, the works council exercises the right to participation.

### **Section 29**

#### **Convening of meetings**

(1) The electoral board has to convene the members of the works council for the purposes of the election under section 26 (1) before one week has elapsed after the election date. The meeting is presided over by the chairperson of the electoral board, until the works council has appointed one of its own members to preside over the election.

(2) Subsequent meetings are called by the chairperson of the works council. The chairperson draws up the agenda and conducts the proceedings. He or she has to notify the works council members of the meetings in good time, informing them of the agenda. The foregoing also applies to the disabled persons' delegation and to the youth and trainee representatives, insofar as they are entitled to participate in the works council meeting. If a member of the works council or of the youth and trainee delegation is unable to participate in a meeting, he or she is to inform the chairperson without delay, indicating the reasons for his or her absence. The chairperson is to then invite the substitute to replace the said member of the works council or the youth and trainee representative in his or her absence.

(3) The chairperson has to convene a meeting and place on its agenda the matter on which a discussion has been requested, if such request is made by one-fourth of the members of the works council or by the employer.

(4) The employer participates in the meetings which take place at his request and any other meetings to which he is expressly invited. The employer may be accompanied by a representative of the employers' association of which he or she is a member.

### **Section 30**

#### **Meetings of the works council**

(1) The works council normally meets during working hours. In fixing the meetings the works council has to take account of the operational needs of the establishment. The employer has

to be notified of the date of the meeting in advance. Meetings of the works council are not public. They take place as face-to-face meetings.

(2) In derogation from paragraph 1 sentence 5 participation in a works council meeting may take the form of a video or telephone conference provided

1. the prerequisites for such a form of participation have been laid down in the standing orders while ensuring that face-to-face meetings have priority,
2. not less than a quarter of the members of the works council submit their objection to the chairperson within a period to be determined by the chairperson and
3. it is ensured that third persons cannot take note of the content of the meeting.

Recording of the meeting is not allowed.

(3) If the works council meeting is held with the additional possibility of participating by video and telephone conference, participation on site is also deemed necessary.

### **Section 31**

#### **Participation of trade union delegates**

If one-fourth of the members of the works council so request, a delegate of a trade union represented on the works council may be invited to attend meetings in an advisory capacity; in that case the trade union is to be notified in good time of the time of the meeting and its agenda.

### **Section 32**

#### **Participation of the disabled persons' delegation**

The disabled persons' delegation (section 177 of Book Nine of the Social Code) may participate in all meetings of the works council in an advisory capacity.

### **Section 33**

#### **Decisions of the works council**

(1) Unless otherwise provided in this Act, the decisions of the works council are deemed to be adopted if the majority of the members present vote in favour. Members of the works council who participate in the voting by video or telephone conference are deemed to be present. In the case of a tie the motion is taken to be defeated.

(2) At least one-half of the members of the works council must participate in the voting to constitute a quorum; members may be replaced by substitutes.

(3) If the youth and trainee delegation participates in the voting, the votes of the youth and trainee representatives are taken into account in tallying the results.

### **Section 34**

#### **Minutes**

(1) Minutes are to be kept of all proceedings of the works council, giving at least the text of all decisions taken and the majority by which they were adopted. The minutes are to be signed by the chairperson and one other member. They are to be accompanied by a list of the members present, in which each member has to personally enter his or her name. If a member of the works council participates in the meeting by video or telephone conference, he or she must confirm his or her participation in text form to the chairperson. The confirmation has to be attached to the minutes.

(2) If the employer or a trade union representative participated in the meeting, he or she is to be given a copy of the section of the minutes which concerns him. Any objections to the minutes are to be lodged in writing without delay; they are to be attached to the minutes.

(3) Members of the works council are entitled at any time to inspect all records of the works council and its committees.

### **Section 35**

#### **Deferment of decisions**

(1) If a majority of the youth and trainee delegation or the disabled persons' delegation is of the opinion that a decision of the works council considerably prejudices important interests of the employees they represent, the decision is at their request to be deferred for one week (counted from the date on which the decision is taken) to allow time for an attempt to come to an agreement, where appropriate with the assistance of the trade unions represented in the establishment.

(2) On expiry of this period a fresh decision is to be taken on the matter at issue. If the initial decision is confirmed, no further deferment may be requested; the same rule applies if the initial decision is adopted with only minor amendments.

### **Section 36 Standing orders**

Further provisions respecting the conduct of business are to be laid down in writing in standing orders to be adopted by the works council by majority vote of its members.

### **Section 37 Honorary nature of post; loss of working time**

(1) The post of member of the works council is unpaid.

(2) The members of the works council are to be released from their work duties without loss of pay to the extent necessary for the proper performance of their functions, having regard to the size and nature of the establishment.

(3) By way of compensation for works council activities which for operational reasons must be performed outside working hours, a member of a works council is entitled to corresponding time off without loss of pay. Operational reasons are also present if the works council activities cannot be carried out during the personal working hours because of different working hours of the works council members. Such time off is to be granted within a month; if this cannot be done for operational reasons, the time spent on such activities is to be remunerated on the same basis as extra work.

(4) During his or her term of office and for one year thereafter the remuneration of a member of the works council may not be fixed at a lower rate than the remuneration paid to employees in a comparable position who have followed the career that is usual in the establishment. The same applies to general benefits granted by the employer.

(5) During his or her term of office and for one year thereafter a member of the works council may be employed only on activities that rank on the same level as those of the employees referred to in the preceding paragraph, except where this is precluded by imperative operational requirements.

(6) Paragraphs (2) and (3) apply accordingly to the participation of training and educational courses, in so far as the knowledge imparted is necessary for the activities of the works council. Operational reasons as defined in paragraph (3) are also present if the training is provided to the works council member outside his working hours due to special features of the establishment's working hours regulations; in this case, the claim for compensation is limited to the working hours of one full-time employee per day of training, taking into account the releases stipulated in paragraph (2) hereof. In scheduling the time for attending training and educational courses the works council has to take account of the operational requirements of the establishment. It has to notify the employer in good time of the participation in training and educational courses and of the time at which they are held. If the employer feels that the operational requirements of the establishment have not sufficiently been taken into account, he may submit the case to the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(7) Without prejudice to paragraph (6), each member of the works council is entitled during his or regular term of office to a paid release for a total of three weeks to enable him or her to participate in training and educational courses that have been approved for this purpose by the competent central labour authority of the Land concerned after consultation with the central organization of trade unions and employers' associations. The entitlement conferred



by the preceding sentence is increased to four weeks for employees who are serving for the first time as a member of the works council and have not yet previously served as a youth and trainee representative. Paragraph (6) sentence 2 to 6 applies.

### **Section 38 Releases**

(1) The minimum number of works council members to be released from their work duties depends on the number of employees normally employed in the establishment, as set out below:

- 200 to 500 employees: 1 member of the works council,
- 501 to 900 employees 2 members of the works council
- 901 to 1500 employees 3 members of the works council
- 1501 to 2000 employees 4 members of the works council
- 2001 to 3000 employees 5 members of the works council
- 3001 to 4000 employees 6 members of the works council
- 4001 to 5000 employees 7 members of the works council
- 5001 to 6000 employees 8 members of the works council
- 6001 to 7000 employees 9 members of the works council
- 7001 to 8000 employees 10 members of the works council
- 8001 to 9000 employees 11 members of the works council
- 9001 to 10000 employees 12 members of the works council.

In establishments with more than 10,000 employees one further member of the works council is to be released for each additional fraction of 2,000 employees. Releases may also be granted in the form of partial releases. Taken together, such partial releases may not exceed the amount of releases specified in sentence 1 and 2. Other arrangements concerning releases can be made by collective or works agreement.

(2) The works council members to be released are elected by secret ballot and in accordance with the principles of proportional representation by the works council from its midst after consultation with the employer. If only one list of candidates is proposed, the ballot is carried out in accordance with the principles of the majority vote; if only one works council member is to be released, he or she is elected by simple majority. The works council has to give the employer the names of the members to be released. If the employer feels that the release is not justifiable under the circumstances, he or she may appeal to the conciliation committee within two weeks of being notified. The award of the conciliation committee takes the place of an agreement between the employer and the works council. If the conciliation committee confirms the concern of the employer, it also has to take into account the protection of minorities within the meaning of sentence 1 when deciding upon another works council member to be released. If the employer does not appeal to the conciliation committee, his approval is deemed to have been given and the releases takes effect on the expiry of the two weeks referred to above. Section 27 (1) sentence 5 applies accordingly to removal of members from office.

(3) In respect of members of the works council who have been released from their work duties for three full consecutive terms of office, the period during which their remuneration continues pursuant to section 37 (4) and their employment pursuant to 37 (5) is extended to two years after the expiry of their term of office.

(4) Members of the works council who have been released from their work duties may not be debarred from vocational training programmes inside or outside the establishment. Within a

year of the date on which the release comes to an end, members of the works council are to be allowed, as far as the facilities offered by the establishment permit, to take any career training normally provided for the employees of the establishment that they missed because of their release. In respect of members of the works council who were released from their work duties for three full consecutive terms of office, the period referred to in the preceding sentence is extended to two years.

### **Section 39**

#### **Consultation hours**

(1) The works council may fix hours for consultation during working hours. The time and place of such consultation hours are to be fixed in agreement with the employer. If no agreement is reached the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(2) If the youth and trainee delegation does not have its own consultation hours, a member of the youth and trainee delegation may take part in the consultation hours held by the works council for the purpose of advising the employees referred to in section 60 (1).

(3) Any loss of working time entailed by making use of consultation hours or otherwise seeking the assistance of the works council does not give the employer a right to reduce the employee's remuneration.

### **Section 40**

#### **Expenses of the works council and material facilities**

(1) Any expenses arising out of the activities of the works council are defrayed by the employer.

(2) The employer has to provide to the necessary extent the premises, material facilities, means of information and communication and office staff required for the meetings, consultations and day-to-day operation of the works council.

### **Section 41**

#### **Prohibition of employees' contributions**

It is unlawful to collect or pay employees' contributions towards the works council.

### **Division Four**

#### **Works meeting**

### **Section 42**

#### **Composition, sectional meetings, department meetings**

(1) The works meeting is composed of all the employees of the establishment; it is conducted by the chairperson of the works council. It is not public. In establishments whose nature precludes works meetings which all employees can participate in at the same time, sectional meetings are to be held.

(2) The works council are to call department meetings for employees of departments that are separated by their organization or location where this is necessary to discuss the special interests of the said employees. Department meetings are conducted by a member of the works council who should, if possible, be employed in the department concerned. Paragraph 1 sentence 2 and 3 applies accordingly.

### **Section 43**

#### **Ordinary works meetings and department meetings**

(1) The works council has to call a works meeting once in every calendar quarter and report on its activities. In the circumstances referred to in section 42 (2) sentence 1 the works council has to organise two of the works meetings referred to in the preceding sentence in the form of department meetings. The department meetings are to be held simultaneously, where possible. The works council may call an additional works meeting (or, in the circumstances referred to in section 42 (2) sentence 1, one additional holding of

simultaneous department meetings) in every calendar half year, if this appears advisable for special reasons.

(2) The employer is to be invited to the works meetings and department meetings and notified of the agenda. He or she is entitled to address the meetings. At least once in every calendar year the employer or his or her representative has to present a report to the works meeting on staff questions including the status of equality between women and men and the integration of the foreign employees working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment as far as there is no risk of a disclosure of trade or business secrets.

(3) The works council may, and if so requested by the employer or one-fourth or more of the employees with voting rights, must convene a works meeting and place on the agenda the matter on which a discussion has been requested. The employer is to be notified in good time of the day and time of the meetings convened at his request.

(4) At the request of a trade union represented in the establishment, the works council must call a works meeting of the type referred to in paragraph (1) sentence 1 within two weeks of receiving the said request, if no works meeting and no department meetings have been held in the preceding calendar half year.

#### **Section 44**

##### **Time of meetings and loss of remuneration**

(1) Meetings held pursuant to sections 14a, 17 and 43 (1) as well as any meetings called at the request of the employer are held during working hours unless it is absolutely necessary in view of the nature of the establishment to make some other arrangement. The time for participation in the meetings, including additional travel time, is to be remunerated as hours of work. This rule also applies if meetings are held outside working hours because of the nature of the establishment; any travel costs incurred by the employees through participation in these meetings are to be reimbursed by the employer.

(2) All other works meetings or department meetings are held outside working hours. This rule may be relaxed if the employer so agrees; meetings held during working hours with the employer's agreement do not give the employer any right to reduce the employees' remuneration.

#### **Section 45**

##### **Subjects dealt with at works meetings and department meetings**

Works meetings and department meetings may deal with matters of direct concern to the establishment or to the employees, including subjects in connection with collective bargaining policies, social policy, environmental and financial matters, issues concerning the promotion of equality between women and men and the reconciliation of family and employment; as well as the integration of the foreign employees working in the establishment, the principles laid down in section 74 (2) apply. Works meetings and department meetings may make suggestions to the works council and take a stand on its decisions.

#### **Section 46**

##### **Delegates from industrial associations**

(1) Delegates from the trade unions represented in the establishment may participate in all works and department meetings in an advisory capacity. Where the employer attends a works or department meeting, he or she may be accompanied by a delegate from the employers' association of which he or she is a member.

(2) The trade unions represented on the works council are to be sent a written notification in good time indicating the date, time and agenda of the works or department meetings.

#### **Division Five**

##### **Central works council**

## **Section 47**

### **Conditions for establishment, number of members, weighting of votes<sup>4</sup>**

- (1) If there are several works councils in one company, a central works council is to be established.
- (2) Each works council appoints to the central works council one of its members if it consists of up to three members, and two of its members if it comprises more than three members. The genders are to be adequately represented.
- (3) The works council has to appoint at least one substitute for each member of the central works council and establishes their order of succession to office.
- (4) A different number of members of the central works council from the one prescribed in paragraph (2) sentence 1 may be provided for by collective agreement or works agreement.
- (5) If under the provisions of paragraph (2) sentence 1 a central works council has more than forty members and no stipulation of the type referred to in paragraph (4) has been made by collective agreement, the employer and the central works council is to conclude a works agreement on the number of members of the said council providing for the joint appointment of members to the central works council by the works councils of two or more establishments of the company that are linked by regional ties or similar interests.
- (6) If no agreement is reached in a case covered by paragraph (5), the matter is decided by a conciliation committee to be set up for the whole company. The award of the conciliation committee takes the place of an agreement between the employer and the central works council.
- (7) Each member of the central works council has as many votes as there are employees having voting rights and recorded in the voters' list of the establishment in which he or she was elected. Where several members of the works council have been appointed, the votes are to be apportioned among them in accordance with sentence 1.
- (8) Where a member of the central works council has been appointed to represent more than one establishment, he or she has as many votes as there are employees with voting rights who are recorded in the voters' list of the establishment for which he or she has been appointed; if several members have been appointed, paragraph 7 sentence 2 applies accordingly.
- (9) For the members of the central works council who have been appointed by a joint establishment of several companies, provision differing from paragraphs 7 and 8 hereof can be made by collective agreement or works agreement.

**Footnote 4:** In accordance with Article 14 sentence 2 of the Act Reforming the Works Constitution Act (Gesetz zur Reform des Betriebsverfassungsgesetzes - BetrVerf-Reformgesetz) of 23 July 2001 (Federal Gazette, Part I p. 1852), section 47 (2) (Article 1 no. 35 letter a of the Act Reforming the Works Constitution Act) is not to be applicable to a works council prior to its re-election if it had been in office when the Act became effective.

## **Section 48**

### **Removal from office of members of the central works council**

One-fourth or more of the employees of the company who have voting rights or the employer or the central works council or a trade union represented in the company may apply to the labour court for an order to remove from office any member of the central works council on the grounds of grave dereliction of his statutory duties.

## **Section 49**

### **Termination of membership**

Membership of the central works council is ended by termination of membership of the works council, resignation, removal from office in the central works council by court order or by the works council.

## **Section 50**

### **Competency**

(1) The central works council is competent to deal with matters affecting the company as a whole or two or more of its establishments, which the individual works councils are unable to settle within their establishments; therefore, its competency also covers establishments that have no works council. It is not deemed to be a higher organ than the individual works councils.

(2) A works council may refer a matter to the central works council by a majority vote of its members. In doing so, the works council may reserve the right of decision. Section 27 (2) sentence 3 and 4 applies accordingly.

### **Section 51 Conduct of business**

(1) Sections 25 (1), 26, 27 (2) and (3), section 28 (1) sentence 1 and 3 and paragraph (2), sections 30, 31, 34, 35, 36, 37 (1) to (3) and sections 40 and 41 apply to the central works council accordingly. Section 27 (1) also applies accordingly with the proviso that the central works committee consists of the chairperson and vice-chairperson of the central works council and some additional members whose number depends on the size of the central works council, as set out below:

9 to 16 members: 3 additional committee members,

17 to 24 members: 5 additional committee members,

25 to 36 members: 7 additional committee members,

more than 36 central works council members: 9 additional committee members.

(2) If a central works council is to be established, the works council of the head office of the company or, if there is no such works council, the works council of the establishment with the largest number of employees with voting rights is to call a meeting to elect the chairperson and the vice-chairperson of the central works council. The chairperson of the works council that has called the meeting has to preside over the meeting until the central works council has appointed one of its members to conduct the election. Section 29 (2) to (4) applies accordingly.

(3) Unless otherwise provided, the decisions of the central works council are taken by a majority of the members present and voting. Members of the central works council who participate in the voting by video or telephone conference are deemed to be present. In the case of a tie the motion is deemed to be defeated. To constitute a quorum not less than one-half of the members of the central works council must participate in the vote and those who vote must represent at least one-half of the total votes; members may be replaced by substitutes. Section 33 (3) applies accordingly.

(4) Section 33 (1) and (2) apply to voting in the central works committee and other committees of the central works council.

(5) Insofar as this Act does not contain any special provisions, the provisions relating to the rights and obligations of the works council apply accordingly to the central works council.

### **Section 52 Attendance of the central disabled persons' delegation**

The central disabled persons' delegation (section 180 (1) of Book Nine of the Social Code) may participate in all meetings of the central works council in an advisory capacity.

### **Section 53 Meeting of works councils**

(1) At least once in every calendar year the central works council has to call a meeting of the chairpersons and vice-chairpersons of the works councils and all other members of the works committees. Works councils may appoint other members not covered by sentence 1 as delegates to this meeting on condition that the total number of participants allotted to it in application of sentence 1 is not exceeded.

(2) At the said meeting –

1. the central works council has to present a report on its activities, and
2. the employer has to present a report on staff questions and social affairs in the company including the status of equality between women and men and the integration of the foreign employees working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment, in as far as there is no risk of a disclosure of trade or business secrets.

(3) The central works council may hold the works council meetings in the form of partial meetings. In all other respects section 42 (1) sentence 1 clause 2 and sentence 2, section 43 (2) sentence 1 and 2 and sections 45 and 46 apply accordingly.

## **Division Six Combine works council**

### **Section 54 Establishment of the combine works council**

(1) In a combine (as defined in section 18 (1) of the Joint Stock Act (Aktiengesetz)) a combine works council may be established by resolutions of the individual central works councils. Any proposal to establish such council must be approved by the central works councils for the subsidiaries of the combine employing more than 50 per cent of the employees of the whole combine.

(2) Where a subsidiary of the combine only has a works council, the said council assumes the duties assigned to the central works council under the provisions of this Division.

### **Section 55 Composition of the combine works council and weighting of votes**

(1) Each central works council appoints to the combine works council two of its members. The genders are to be adequately represented.

(2) The central works council has to appoint at least one substitute for each member of the combine works council and establish their order of succession to office.

(3) Each member of the combine works council is entitled to one-half of the votes of the members of the central works council by which he or she was appointed.

(4) A different number of members of the combine works council than the one prescribed in paragraph (1) sentence 1 may be provided for by collective agreement or works agreement. Section 47 (5) to (9) applies accordingly.

### **Section 56 Removal from office of members of the combine works council**

One-fourth or more of the employees with voting rights of the subsidiaries of the combine or the employer or the combine works council or a trade union represented in the combine may apply to the labour court for an order to remove from office any member of the combine works council on the grounds of grave dereliction of his statutory duties.

### **Section 57 Termination of membership**

Membership of the combine works council is ended by termination of membership of the central works council, resignation, removal from office in the combine works council by court order or by the central works council.

### **Section 58 Competency**

(1) The combine works council is competent to deal with matters affecting the combine as a whole or two or more of its subsidiaries, which the individual central works councils are unable to settle within their establishments; insofar its competency also covers



establishments that have no central works council as well as establishments of the subsidiaries without a works council. It is not deemed to be a higher organ than the individual central works councils.

(2) A central works council may refer a matter to the combine works council by a majority vote of its members. In doing so, the central works council may reserve the right of decision. Section 27 (2) sentence 3 and 4 apply accordingly.

### **Section 59**

#### **Conduct of business**

(1) Sections 25 (1), 26, 27 (2) and (3), section 28 (1) sentence 1 and 3, and paragraph (2), sections 30, 31, 34, 35, 36, 37 (1) to (3) and sections 40, 41 and 51 (1) sentence 2 and paragraph (3) to (5) apply accordingly to the combine works council.

(2) If a combine works council is to be established, the central works council of the controlling company or, if there is no such central works council, the central works council of the subsidiary with the largest number of employees with voting rights has to call a meeting to elect the chairperson and vice-chair of the combine works council. The chairperson of the central works council that has called the meeting has to preside over the meeting until the combine works council has appointed one of its members to conduct the election. Section 29 (2) to (4) applies accordingly.

### **Section 59a**

#### **Attendance of the combine disabled persons' delegation**

The combine disabled persons' delegation (section 180 (2) of Book Nine of the Social Code) may participate in all meetings of the combine works council in an advisory capacity.

### **Part Three**

#### **Youth and trainee delegation**

##### **Division One**

#### **Youth and trainee delegation at the level of the establishment**

### **Section 60**

#### **Establishment and function**

(1) In establishments with five or more employees under 18 years of age (young employees) or employees receiving vocational training, youth and trainee delegations are elected.

(2) The youth and trainee delegation represents the special interests of the employees referred to in the preceding paragraph in accordance with the provisions set out below.

### **Section 61**

#### **Voting rights and eligibility**

(1) All employees of the establishment referred to in section 60 (1) have voting rights.

(2) All employees of the establishment who are under 25 years of age or employees receiving vocational training are eligible for election; section 8 (1) sentence 3 applies. Members of the works council are not eligible as youth and trainee representatives.

### **Section 62**

#### **Number of youth and trainee representatives; composition of the youth and trainee delegation**

(1) The membership of the youth and trainee delegation is as follows, according to the number of young employees and trainees normally employed in the establishment:

5 to 20 employees referred to in section 60 (1) – 1 person,

21 to 50 employees referred to in section 60 (1) – 3 members,

51 to 150 employees referred to in section 60 (1) – 5 members,

151 to 300 employees referred to in section 60 (1) – 7 members,

- 301 to 500 employees referred to in section 60 (1) – 9 members,
- 501 to 700 employees referred to in section 60 (1) – 11 members,
- 701 to 1000 employees referred to in section 60 (1) – 13 members,
- more than 1000 employees referred to in section 60 (1) – 15 members.

(2) The youth and trainee delegation is to comprise, as far as possible, representatives of the various employment categories and training occupations of the employees of the establishment referred to in section 60 (1).

(3) The gender that accounts for a minority of the employees referred to in section 60 (1) must at least be represented according to its relative numerical strength whenever the youth and trainee delegation consists of three or more members.

### **Section 63 Election rules**

(1) The youth and trainee delegation is elected directly by secret ballot.

(2) The works council appoints an electoral board and its chairperson at least eight weeks before the end of the term of office of the youth and trainee delegation. Section 14 (2) to (5), section 16 (1) sentence 4 to 6, section 18 (1) sentence 1, section 18 (3) and sections 19 and 20 apply accordingly to the election of the youth and trainee representatives.

(3) If the works council fails to appoint an electoral board or does not appoint it at least six weeks before the end of the term of office of the youth and trainee delegation, or if the electoral board fails to carry out its duties under section 18 (1) sentence 1, section 16 (2) sentence 1 and 2, section 16 (3) sentence 1 and section 18 (1) sentence 2 apply accordingly subject to the proviso that the application to the labour court may also be made by young employees.

(4) Section 14a applies accordingly to establishments that normally have five to 100 permanent employees referred to in section 60 (1). The period specified for appointing the electoral board is reduced to four weeks in the cases covered by paragraph 2 sentence 1, and to three weeks in the cases covered by paragraph 3 sentence 1.

(5) Section 14a (5) applies accordingly to establishments that normally have 101 to 200 employees referred to in section 60 (1).

### **Section 64 Time of elections and term of office**

(1) Regular elections to the youth and trainee delegation are held every two years at some time between 1 October and 30 November. In respect of the election of the youth and trainee delegation outside this period, section 13 (2) no. 2 to 6 and paragraph (3) apply accordingly.

(2) The regular term of office of a youth and trainee delegation is two years. It runs from the announcement of the election results or, if a youth and trainee delegation is still in office at that date, from the end of its term of office. The term of office expires not later than 30 November of the year in which regular elections are to be held under paragraph (1) sentence 1. In the case covered by section 13 (3) sentence 2, the term of office ends not later than 30 November of the year in which a new youth and trainee delegation is to be elected. In the case covered by section 13 (2) no. 2, the term of office ends on the announcement of the election results for the newly elected youth and trainee delegation.

(3) If a member of the youth and trainee delegation reaches his or her twenty-fifth birthday or terminates his or her vocational training relationship while in office, he or she continues to hold office until the end of his or her term.

### **Section 65 Conduct of business**

(1) Sections 23 (1), 24, 25, 26, 28 (1), sentence 1 and 2 and sections 30, 31, 33 (1) and (2), as well as sections 34, 36, 37, 40 and 41 apply accordingly to the youth and trainee delegation.

(2) The youth and trainee delegation may hold meetings after notifying the works council; section 29 applies accordingly. Such meetings may be attended by the chairperson of the works council or another member of the works council delegated for this purpose.

### **Section 66**

#### **Deferment of decisions taken by the works council**

(1) If a majority of the youth and trainee representatives are of the opinion that a decision of the works council considerably prejudices important interests of the employees referred to in section 60 (1), the decision is to be deferred for one week at their request to allow time for an attempt to come to an agreement, where appropriate with the assistance of the trade unions represented in the establishment.

(2) If the initial decision is confirmed, no further deferment may be requested; the same rule applies if the initial decision is adopted with only minor amendments.

### **Section 67**

#### **Participation in works council meetings**

(1) The youth and trainee delegation may send a representative to participate in any meeting of the works council. Where matters of particular concern to the employees referred to in section 60 (1) are on the agenda, the full youth and trainee delegation is entitled to participate in the discussion of the relevant items.

(2) The youth and trainee representatives are entitled to take part in the vote, insofar as the decisions to be taken by the works council mainly concern the employees referred to in section 60 (1).

(3) The youth and trainee delegation may request the works council to place on the agenda of its next meeting any matters of particular concern to the employees referred to in section 60 (1) that have previously been discussed by the youth and trainee delegation. The works council is to refer matters of particular concern to the employees referred to in section 60 (1) to the youth and trainee delegation for consideration.

### **Section 68**

#### **Participation in joint discussions**

The works council has to invite the youth and trainee delegation to take part in discussions between the employer and the works council if the matters dealt with are of particular concern to the employees referred to in section 60 (1).

### **Section 69**

#### **Consultation hours**

In establishments that normally employ more than fifty of the employees referred to in section 60 (1), the youth and trainee delegation may appoint hours for consultation during working hours. The time and place of such consultation hours are to be fixed by agreement between the works council and the employer. Section 39 (1) sentence 3 and 4 and section 39 (3) apply accordingly. The chairman of the works council or another member of the works council delegated for this purpose may be present at the consultation hours of the youth and trainee delegation in an advisory capacity.

### **Section 70**

#### **General duties**

(1) The youth and trainee delegation has the following general duties:

1. to request the works council to take action for the benefit of the employees referred to in section 60 (1), especially in vocational training matters and issues regarding the continued employment of persons employed for training purposes;
- 1a. to request the works council to take action to ensure the actual equality of the employees referred to in section 60 (1) as stipulated in section 80 (1) no. 2a and 2b;

2. to see that effect is given to Acts, statutory instruments, safety regulations, collective agreements and works agreements in favour of the employees referred to in section 60 (1);
3. to receive suggestions from the employees referred to in section 60 (1), especially in matters of vocational training, and have the works council act on these suggestions if they appear justified. The youth and trainee delegation has to inform the involved employees referred to in section 60 (1) of the state of the negotiations and their results;
4. to promote in the establishment the integration of foreign employees referred to in section 60 (1) and to request the works council to take appropriate action in this respect.

(2) The works council is to supply comprehensive information to the youth and trainee delegation in good time to enable it to discharge its duties. The youth and trainee delegation may demand that the works council make available any documentation it may require for the discharge of its duties.

### **Section 71**

#### **Works meetings for young and trainee employees**

Before or after each works meeting, the youth and trainee delegation may call a works meeting for young and trainee employees in agreement with the works council. The works meeting for young and trainee employees may also be called at another time in agreement with the works council and the employer. Section 43 (2) sentence 1 and 2, section 44 to 46 and section 65 (2) sentence 2 apply accordingly.

### **Division Two**

#### **Central youth and trainee delegation**

### **Section 72**

#### **Conditions for establishment, number of members, weighting of votes**

- (1) If there are two or more youth and trainee delegations in one company, a central youth and trainee delegation is to be established.
- (2) Each youth and trainee delegation appoints one of its members to the central youth and trainee delegation.
- (3) The youth and trainee delegation appoints at least one substitute for the member appointed to the central youth and trainee delegation and determines the order of succession to office.
- (4) A different number of members of the central youth and trainee delegation from the one prescribed in paragraph (2) may be provided for by collective agreement or works agreement.
- (5) If, under the provisions of paragraph (2), a central youth and trainee delegation has more than twenty members and no stipulation of the type referred to in paragraph (4) has been made by collective agreement, the central works council and the employer is to negotiate a works agreement on the number of members of the central youth and trainee delegation, providing for the joint appointment of members to the central youth and trainee delegation by the youth and trainee delegations of two or more establishments of the company that are linked by regional ties or by similar interests.
- (6) If no agreement is reached in a case covered by paragraph (5), the matter is to be decided by a conciliation committee to be set up for the whole company. The award of the conciliation committee takes the place of an agreement between the employer and the central works council.
- (7) Each member of the central youth and trainee delegation has as many votes as there are employees referred to in section 60 (1) recorded in the voters' list of the establishment in which he or she was elected. Where a member of the central youth and trainee delegation has been appointed for more than one establishment, he or she has as many votes as the

number of employees referred to in section 60 (1) recorded in the voters' list of the establishments for which he or she has been appointed. Where two or more members of the youth and trainee delegation have been appointed, the votes are apportioned among them in accordance with sentence 1.

(8) Different provisions from paragraph 7 hereof can be made in a collective or works agreement for the members of the youth and trainee delegation which have been appointed by a joint establishment of several companies.

### **Section 73**

#### **Conduct of business and application of other provisions**

(1) The central youth and trainee delegation may hold meetings after notifying the central works council. The chairperson of the central works council or another member of the central works council delegated for this purpose may participate in the meetings.

(2) Section 25 (1), sections 26 and section 28 (1) sentence 1, and sections 30, 31, 34, 36, 37 (1) to (3), sections 40, 41, 48, 49, 50, 51 (2) to (5), and sections 66 to 68 apply accordingly to the central youth and trainee delegation.

### **Division Three**

#### **Combine youth and trainee delegation**

##### **Section 73a**

#### **Condition for establishment, number of members, weighting of votes**

(1) If several central youth and trainee delegations exist in a combine (as defined in section 18 (1) of the Joint Stock Act) a combine youth and trainee delegation may be established by resolutions of the individual central youth and trainee delegations. Any proposal to establish such delegation must be approved by the central youth and trainee delegations for the subsidiaries of the combine employing at least 75 per cent of the employees referred to in section 60 (1). Where a subsidiary of the combine only has a youth and trainee delegation, the said delegation assumes the duties assigned to the central youth and trainee delegation under the provisions of this division.

(2) Each central youth and trainee delegation appoints one of its members to the combine youth and trainee delegation. It appoints at least one substitute for each member of the combine youth and trainee delegation and establishes their order of succession to office.

(3) Each member of the combine youth and trainee delegation has a number of votes that corresponds to the total number of votes of the central youth and trainee delegation by which it was appointed.

(4) Section 72 (4) to (8) apply accordingly.

##### **Section 73b**

#### **Conduct of business and application of other provisions**

(1) The combine youth and trainee delegation may hold meetings after notifying the combine works council. The chairperson of the combine works council or another member of the combine works council delegated for this purpose may participate in the meetings.

(2) Section 25 (1), sections 26, 28 (1) sentence 1, sections 30, 31, 34, 36, 37 (1) to (3), sections 40, 41, 51 (3) to (5), sections 56, 57, 58, 59 (2) and sections 66 to 68 apply accordingly to the combine youth and trainee delegation.

### **Part Four**

#### **Collaboration by employees and co-determination**

##### **Division One**

##### **General**

##### **Section 74**

#### **Principles of collaboration**

(1) The employer and the works council are to meet together at least once a month for joint conferences. They have to discuss the matters at issue with an earnest desire to reach agreement and make suggestions for settling their differences.

(2) Industrial action between the employer and the works council is unlawful; the foregoing does not apply to industrial action between collective bargaining parties. The employer and the works council have to refrain from activities that interfere with operations or imperil the peace in the establishment. They are to refrain from any activity within the establishment in promotion of a political party; the foregoing does not apply to dealing with matters of direct concern to the establishment or its employees in the field of collective bargaining policy, social policy, environmental policy and of a financial nature.

(3) The fact that an employee has assumed duties under this Act does not restrict him or her in his or her trade union activities even where such activities are carried out in the establishment.

### **Section 75**

#### **Principles for the treatment of persons employed in the establishment**

(1) The employer and the works council have to ensure that all persons working in the establishment are treated in accordance with the principles of law and equity, in particular that no one is subject to discrimination on grounds of race, ethnic origin, descent or other origin, nationality, religion or belief, disability, age, political or trade union activities or convictions or on the grounds of gender or sexual identity.

(2) The employer and the works council have to safeguard and promote the untrammelled development of the personality of the employees of the establishment. They have to promote the independence and personal initiative of the employees and working groups.

### **Section 76**

#### **Conciliation committee**

(1) Whenever the need arises a conciliation committee is to be set up for the purpose of settling differences of opinion between the employer and the works council, central works council or combine works council. A standing conciliation committee may be established by works agreement.

(2) The conciliation committee is composed of assessors appointed in equal number by the employer and the works council and of an independent chairperson accepted by both sides. If no agreement can be reached on a chairperson, he or she is appointed by the labour court. The latter also decides in cases where no agreement can be reached on the number of assessors.

(3) The conciliation committee has to act without delay. It adopts its decisions by majority vote after oral proceedings. The chairperson does not participate in the voting at first; in the case of a tie the discussion is resumed and the chairperson participates in the subsequent vote. The decisions of the conciliation committee are to be recorded in writing and signed by the chairperson or recorded electronically and must be provided with the chairperson's qualified electronic signature as well as transmitted to the employer and the works council.

(4) Further details of the procedure in the conciliation committee may be regulated by works agreement.

(5) In cases where the award of the conciliation committee takes the place of an agreement between the employer and the works council, the conciliation committee acts at the request of either side. If one side fails to appoint members or if the members appointed by one side fail to participate after being convened in due time, the chairperson and the members present make the award without them following the procedure laid down in paragraph (3). In taking its decisions the conciliation committee has due regard to the interests of the establishment and of the employees concerned as reasonably assessed. The employer or the works council may make an appeal to the labour court on the grounds that the conciliation committee has exceeded its powers, but only within two weeks of the date of notification of the award.



(6) In all other cases the conciliation committee acts only if both sides so request or agree to its intervention. In such cases its award take the place of an agreement between the employer and the works council only if both sides have accepted the award in advance or accept it subsequently.

(7) In as far as other provisions allow for judicial proceedings, such proceedings are not precluded by the award of the conciliation committee.

(8) It may be stipulated by collective agreement that an arbitration body set up under the agreement takes the place of the conciliation committee referred to in paragraph (1).

#### **Section 76a**

##### **Costs of the conciliation committee**

(1) The costs of the conciliation committee are borne by the employer.

(2) The assessors of the conciliation committee who belong to the establishment do not receive any remuneration for their activity; section 37 (2) and (3) apply accordingly. Where a conciliation committee is to be formed to settle differences of opinion between the employer and the central works council or combine works council, sentence 1 applies accordingly to the assessors belonging to an establishment of the company or of a constituent company.

(3) The chairperson and the assessors of the conciliation committee who are not among the persons referred to in paragraph (2) are entitled to remuneration from the employer for their activity. The amount of remuneration is based on the principles of paragraph (4) sentence 3 to 5.

(4) The Federal Ministry of Labour and Social Affairs may settle the remuneration in accordance with paragraph (3) by way of a ministerial order. Maximum rates are to be established in the remuneration regulations. In this case, the time required, the complexity of the dispute and the loss of earnings are to be taken into account, in particular. The remuneration of the assessors is to be lower than that of the chairperson. When establishing the maximum rates, the rightful interests of the members of the conciliation committee and the employer are to be taken into account.

(5) Paragraph (3) and remuneration regulations in accordance with paragraph (4) may be deviated from by way of a collective agreement or in a works agreement, if a collective agreement permits this or if no such collective agreement exists.

#### **Section 77**

##### **Execution of joint decisions, works agreements**

(1) Agreements between the works council and the employer including those based on an award of the conciliation committee are executed by the employer save where otherwise agreed in particular cases. The works council may not interfere with the management of the establishment by any unilateral action.

(2) Works agreements are to be negotiated by the works council and the employer and recorded in writing. They are to be signed by both sides, except where they are based on an award of the conciliation committee. If works agreements are concluded in electronic form, employer and works council have to sign the same document electronically in derogation from section 126a (2) of the Civil Code. The employer has to display the works agreements in a suitable place in the establishment.

(3) Works agreements cannot deal with remuneration and other conditions of employment that have been fixed or are normally fixed by collective agreement. The foregoing does not apply where a collective agreement expressly authorises the making of supplementary works agreements.

(4) Works agreements apply directly and mandatorily. Any rights granted to employees under a works agreement cannot be waived except with the agreement of the works council. Such rights cannot be forfeited. Any time limits for invoking these rights are valid only in so far as they are laid down by collective or works agreement; the same applies to any reduction of the periods provided for the lapsing of rights.

(5) Unless otherwise agreed, works agreements may be terminated at three months' notice.

(6) After the expiry of a works agreement its provisions continue to apply until a new agreement is made in respect of all matters in which an award of the conciliation committee may take the place of an agreement between the employer and the works council.

### **Section 78**

#### **Protective provisions**

Members of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the finance committee, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, an arbitration board set up by collective agreement (section 76 (8)) a grievance committee (section 86), or personnel providing information (section 80 (2) sentence 4) may not be interfered with or obstructed in the discharge of their duties. They may not be prejudiced or favoured by reason of their office; this principle also applies to their vocational development.

### **Section 78a**

#### **Protection of trainees in special cases**

(1) Where the employer does not intend to offer a trainee who is a member of the youth and trainee delegation, the works council, the ship's committee or the fleet works council permanent employment after completion of vocational training, he or she has to notify the trainee of this fact in writing three months before completion of the vocational training.

(2) Where a trainee referred to in paragraph (1) demands continued employment from the employer in writing within the last three months prior to completion of his or her vocational training, a permanent employment contract is deemed to exist between the trainee and employer following the vocational training. Section 37 (4) and (5), in particular, are to apply to this employment accordingly.

(3) Paragraphs (1) and (2) also apply where the vocational training ends less than one year after the end of the term of office of the youth and trainee delegation, the works council, the ship's committee or the fleet works council.

(4) The employer may apply to the labour court not more than two weeks after completion of the vocational training

1. to establish that an employment contract in accordance with paragraph (2) or (3) has not been established, or
2. to dissolve an employment contract which has already been established in accordance with paragraph (2) or (3),

if facts exist which indicate that, in view of all the circumstances, continued employment may not be reasonably expected of the employer. The works council, the ship's committee, the fleet works council and the youth and trainee delegation, if one of its members is concerned, are also involved in the proceedings before the labour court as interested parties.

(5) Paragraphs (2) to (4) apply, irrespective of whether the employer has observed his or her obligation to notify pursuant to paragraph (1).

### **Section 79**

#### **Secrecy**

(1) Members and substitute members of the works council are bound to refrain from divulging or making use of trade or business secrets that have come to their knowledge as a result of their membership on the works council and which the employer has expressly stated to be confidential. This obligation continues to apply even after they have ceased to belong to the works council. It does not apply as between members of the works council. Moreover it does not apply as regards dealings with members of the central works council, the combine works council, the ship's committee, the fleet works council and the employees' representatives on the supervisory board or in the proceedings of the conciliation committee,

the arbitration body set up by collective agreement (section 76 (8)) or a grievance committee (section 86).

(2) Paragraph (1) applies accordingly to the members and substitute members of the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the financial committee, the ship's committee, the fleet works council, the representative bodies of the employees established under section 3 (1), the conciliation committee, the arbitration body set up by collective agreement (section 76 (8)) and a grievance committee (section 86), as well as to the representatives of trade unions or employers' associations.

#### **Section 79a Data protection**

When processing personal data the works council has to comply with data protection law. Insofar as the works council processes personal data in order to carry out the tasks for which it is responsible, the employer is the controller for the processing of the data within the meaning of data protection law. The employer and the works council support each other in complying with data protection law. The data protection officer is obliged to maintain confidentiality vis-à-vis the employer with regard to information that allows conclusions to be drawn about the works council's opinion-forming process. Section 6 (5) sentence 2 and section 38 (2) of the Federal Data Protection Act (Bundesdatenschutzgesetz) also apply with regard to the relationship between the data protection officer and the employer.

#### **Section 80 General duties**

(1) The works council has the following general duties:

1. to see that effect is given to Acts, statutory instruments, safety regulations, collective agreements and works agreements for the benefit of the employees;
2. to apply to the employer for measures that serve the establishment and the staff.
- 2a. to promote the implementation of actual equality between women and men, in particular, as regards recruitment, employment, training, further training and additional training and vocational advancement;
- 2b. to promote reconciliation of family and work;
3. to receive suggestions from employees and the youth and trainee delegation and, if they are found to be justified, to negotiate with the employer for their implementation; it has to inform the employees concerned of the state of the negotiations and their results;
4. to promote the integration of persons with severe disabilities including the adoption of integration agreements according to section 166 of Book Nine of the Social Code and of other persons in particular need of assistance;
5. to prepare and organise the election of a youth and trainee delegation and to collaborate closely with said delegation in promoting the interests of the employees referred to in section 60 (1); it may invite the youth and trainee delegation to make suggestions and to state its view on various matters;
6. to promote the employment of elderly employees in the establishment;
7. to promote the integration of foreign employees in the establishment and to further understanding between them and their German colleagues, and to request activities to combat racism and xenophobia in the establishment;
8. to promote and safeguard employment in the establishment;

9. to promote safety and health at work and the protection of the environment in the establishment.

(2) The employer is to supply comprehensive information to the works council in good time to enable it to discharge its duties under this Act; such information also refers to the employment of persons who have not entered into a contract of employment with the employer and includes in particular the duration and place of the work assignment and the tasks to be performed by these persons. At its request, the works council is to be granted access at any time to any documentation it may require for the discharge of its duties; in this connection the works committee or a committee set up pursuant to section 28 is entitled to inspect the payroll showing the gross wages and salaries of the employees. The required documentation also includes the contracts on which the employment of the persons referred to in sentence 1 is based. The employer has to provide knowledgeable personnel as informers to the works council, if necessary for the proper discharge of its functions, having due regard to the suggestions of the works council, except where this is precluded by imperative operational requirements.

(3) In discharging its duties the works council may, after making a more detailed agreement with the employer, call on the advice of experts in as far as the proper discharge of its duties so requires. Insofar as the works council has to assess the introduction or application of artificial intelligence in order to carry out its tasks, it is deemed necessary to call on the advice of an expert in this regard. The same applies if the employer and the works council agree on a permanent expert on matters referred to in sentence 2.

(4) The informers and experts are bound to observe secrecy accordingly, as prescribed in section 79.

## **Division Two**

### **Employees' rights to participate and to make complaints**

#### **Section 81**

##### **Employer's obligation to inform and discuss**

(1) The employer has to inform the employee of his or her tasks and responsibilities, the nature of his or her activity and how it fits into the operations of the establishment. Before the employee takes up his or her employment, the employer has to instruct him or her on the safety and health hazards to which he or she will be exposed in his or her employment as well as on the measures and devices for the prevention of the said hazards and on the measures taken pursuant to section 10 (2) of the Safety and Health at Work Act (Arbeitsschutzgesetz).

(2) Any changes within the area of an employee's activities are to be brought to his or her notice in good time. Paragraph (1) applies accordingly.

(3) In those establishments which have no works council, the employer has to consult the employees concerning all measures that might affect the health and safety of the employees.

(4) The employer has to inform the employee about measures envisaged due to plans concerning technical plants, works procedures and operations or jobs and their effects on his or her job, the working environment as well as the contents and nature of his or her activity.

As soon as it is known that the activity of the employee will change and his or her professional knowledge and skills are no longer sufficient to fulfil his or her duties, the employer has to discuss with the employee how the latter's professional knowledge and skills can be adapted to the future requirements within the framework of the in-house possibilities. The employee may call in a member of the works council to the discussion.

#### **Section 82**

##### **Employee's right to be heard and request explanations**

(1) The employee is entitled to obtain a hearing from the persons who are competent according to the organisational structure of the establishment on any operational matter concerning his or her own person. He or she is entitled to state his or her case on any

measure taken by the employer concerning him or her and to make suggestions on the design of his or her workplace and the organization of operations.

(2) The employee is entitled to an explanation of how his or her remuneration is calculated and the elements of which it is composed and to apply for an interview on the assessment of his or her performance and his or her career possibilities in the establishment. He or she may be accompanied by a member of the works council. The member of the works council is bound to observe secrecy with respect to the contents of these discussions except where the employee releases him or her from this obligation in his or her particular case.

### **Section 83**

#### **Access to personal files**

(1) The employee is entitled to have access to his or her personal file. In this connection he or she may call in a member of the works council. The member of the works council is bound to observe secrecy with respect to the contents of the personal file except where the employee releases him or her from this obligation in his or her particular case.

(2) The employee's own comments on the entries in his or her personal file are to be appended at his or her request.

### **Section 84**

#### **Right to make complaints**

(1) Every employee is entitled to make a complaint to the competent bodies in the establishment if he or she feels that he or she has been discriminated against or treated unfairly or otherwise put at a disadvantage by the employer or by other employees of the establishment. He or she may call on a member of the works council for assistance or mediation.

(2) The employer has to inform the employee on how his or her complaint will be dealt with and, if he or she considers the complaint justified, remedy his or her grievance.

(3) The employee may not suffer any prejudice as a result of having made a complaint.

### **Section 85**

#### **Works council's role in dealing with grievances**

(1) The works council has to hear employees' grievances and, if they appear justified, induce the employer to remedy them.

(2) If there are any differences of opinion between the works council and the employer as to whether the complaint is well-founded, the works council may appeal to the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council. The foregoing does not apply in as far as the grievance relates to a legal entitlement.

(3) The employer has to inform the works council on how the grievance is dealt with. The foregoing is without prejudice to section 84 (2).

### **Section 86**

#### **Supplementary agreements**

The details of the grievance procedure may be fixed by collective agreement or works agreement. In this connection provision may be made for the conciliation committee to be replaced in cases covered by section 85 (2) by a grievance committee at the level of the establishment.

### **Section 86a**

#### **Employees' right of proposal**

Each employee has the right to propose issues to be discussed by the works council. If a proposal is seconded by at least 5 per cent of the employees in the establishment, the works council has to place it on the agenda of a works council meeting within two months.

## **Division Three**

### **Social matters**

### **Section 87** **Co-determination rights**

(1) The works council has a right of co-determination in the following matters in so far as they are not prescribed by legislation or collective agreement:

1. matters relating to the rules of operation of the establishment and the conduct of employees in the establishment;
2. the commencement and termination of the daily working hours including breaks and the distribution of working hours among the days of the week;
3. any temporary reduction or extension of the hours normally worked in the establishment;
4. the time and place for and the form of payment of remuneration;
5. the establishment of general principles for leave arrangements and the preparation of the leave schedule as well as fixing the time at which the leave is to be taken by individual employees, if no agreement is reached between the employer and the employees concerned;
6. the introduction and use of technical devices designed to monitor the behaviour or performance of the employees;
7. arrangements for the prevention of accidents at work and occupational diseases and for the protection of health on the basis of legislation or safety regulations;
8. the form, structuring and administration of social services whose scope is limited to the establishment, company or combine;
9. the assignment of and notice to vacate accommodation that is rented to employees in view of their employment relationship as well as the general fixing of the conditions for the use of such accommodation;
10. questions related to remuneration arrangements in the establishment, including in particular the establishment of principles of remuneration and the introduction and application of new remuneration methods or modification of existing methods;
11. the fixing of job and bonus rates and comparable performance-related remuneration including cash coefficients;
12. principles for suggestion schemes in the establishment;
13. principles governing the performance of group work; group work within the meaning of this provision is defined as a group of employees performing a complex task within the establishment's workflows, which has been assigned to it and is executed in a largely autonomous way;
14. structuring of mobile work performed by means of information and communication technology

(2) If no agreement can be reached on a matter covered by the preceding paragraph, the conciliation committee makes a decision. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

### **Section 88** **Works agreements on a voluntary basis**

The following, in particular, may be determined by works agreements:

1. additional measures to prevent accidents at work and health damages;



- 1a. measures concerning the establishment's environmental policy;
2. the establishment of social services whose scope is limited to the establishment, company or combine;
3. measures to promote capital formation;
4. measures to promote the integration of foreign employees and to combat racism and xenophobia in the establishment.
5. measures to include persons with severe disabilities.

### **Section 89**

#### **Health and safety as well as environmental protection at work**

- (1) The works council has to endeavour to ensure that the provisions on safety and health at work and accident prevention as well as environmental protection are observed in the establishment. It has to support the competent occupational safety and health authorities, the statutory accident insurance institutions and other relevant bodies in their efforts to eliminate safety and health hazards by offering suggestions, advice and information.
- (2) The employer and the bodies referred to in paragraph (1) sentence 2 are obliged to invite the works council or the members it delegates for that purpose to participate in all inspections and issues relating to safety and health at work or the prevention of accidents and inquiries into accidents. The employer also has to consult the works council concerning all inspections and issues relating to environmental protection in the company, and has to inform it immediately of any conditions imposed and instructions given by the competent bodies relating to safety and health at work, the prevention of accidents, or environmental protection in the establishment.
- (3) For the purposes of this Act, environmental protection in the establishment comprises all personnel and organisational measures as well as all measures relating to the establishment's buildings, rooms, technical equipment, working methods, working processes and work places that serve the protection of the environment.
- (4) Members delegated by the works council take part in discussions between the employer and the safety delegates within the context of section 22 (2) of Book Seven of the Social Code.
- (5) The works council receives from the employer the minutes of inquiries, inspections and discussions in respect of which paragraphs (2) and (4) provide for its participation.
- (6) The employer has to supply the works council with a copy of the accident notification to be signed by the works council under section 193 (5) of Book Seven of the Social Code.

### **Division Four**

#### **Structuring, organization and design of jobs, operations and the working environment**

### **Section 90**

#### **Information and consultation rights**

- (1) The employer has to inform the works council in due time of any plans concerning
  1. the construction, alteration or extension of works, offices and other premises belonging to the establishment;
  2. technical plants;
  3. working procedures and operations including the use of artificial intelligence, or
  4. jobs and submit the necessary documents.
- (2) The employer has to consult the works council in good time on the action envisaged and its effects on the employees, taking particular account of its impact on the nature of their work and the resultant demands on the employees so that suggestions and objections on the

part of the works council can be taken into account in the plans. In their consultations, the employer and the works council are to bear in mind the established findings of ergonomics relating to the tailoring of jobs to meet human requirements.

**Section 91**  
**Right of co-determination**

Where a special burden is imposed on the employees as a result of changes in jobs, operations or the working environment that are in obvious contradiction to the established findings of ergonomics relating to the tailoring of jobs to meet human requirements, the works council may request appropriate action to obviate, relieve or compensate for the additional stress thus imposed. If no agreement is reached the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

**Division Five**  
**Staff policy**

**Subdivision One**  
**General staff policy**

**Section 92**  
**Manpower planning**

(1) The employer has to inform the works council in full and in good time of matters relating to manpower planning including in particular present and future manpower needs and the resulting staff measures including the planned employment of persons who are not in an employment relationship with the employer, and vocational training measures on the basis of documents. He or she has to consult the works council on the nature and extent of the action required and means of avoiding hardship.

(2) The works council may make recommendations to the employer relating to the introduction and implementation of manpower planning.

(3) Paragraphs (1) and (2) apply accordingly to measures under section 80 (1) no. 2a and 2b, in particular, to the adoption and implementation of measures to promote equality between women and men. This also applies to the integration of persons with severe disabilities in accordance with section 80 (1) no. 4.

**Section 92a**  
**Securing employment**

(1) The works council may submit proposals to the employer relating to the security and promotion of employment. These recommendations may refer to, in particular, a flexible design of working hours, the promotion of part-time work and old-age part-time work, new forms of work organisation, changes in working methods and working processes, the improvement of employee qualifications, alternatives to the spin-off of operations or outsourcing, as well as the production and investment plan.

(2) The employer has to consult the works council concerning these proposals. If the employer believes that the works council's proposals are inadequate, he or she has to give reasons for this opinion, and in establishments with more than 100 employees the reasons are to be provided in written form. The employer or the works council may be accompanied by a representative of the Federal Employment Agency in these consultations.

**Section 93**  
**Notification of vacancies**

The works council may request that all vacancies or vacancies for certain types of jobs are advertised internally before they are filled.

**Section 94**  
**Staff questionnaires, assessment criteria**

(1) Staff questionnaires require the approval of the works council. If no agreement is reached on their contents, the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(2) Paragraph (1) applies accordingly to any personal data contained in written employment contracts that are to be generally used in the establishment and to the formulation of general assessment criteria.

#### **Section 95 Guidelines for selection**

(1) Guidelines for the selection of employees for recruitment, transfer, regrading and dismissal require the approval of the works council. If no agreement is reached on the guidelines or their contents, the employer may apply to the conciliation committee for a decision. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(2) In establishments with more than 500 employees the works council may request the drawing up of guidelines on the technical, personal and social criteria to be applied in taking the measures referred to in the first sentence of the preceding paragraph. If no agreement is reached on the guidelines or their contents, the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(2a) Paragraphs 1 and 2 also apply if artificial intelligence is used when drafting the guidelines in accordance with these paragraphs.

(3) For the purposes of this Act a transfer means assignment to another work area which is expected to continue for more than one month or involves a substantial change in the conditions in which the work is to be performed. In the case of employees who are not, by the nature of their employment relationship, as a rule permanently employed on the same job, the assignment of the job to be performed is not deemed to constitute a transfer.

#### **Subdivision Two Vocational training**

##### **Section 96 Promotion of vocational training**

(1) The employer and the works council have to promote the vocational training of the staff within the framework of the manpower planning for the establishment and in collaboration with the bodies that are competent for vocational training and for the promotion of vocational training. At the request of the works council the employer has to determine the need for vocational training and consult it on matters relating to staff training. The works council may make relevant proposals.

(1a) Where in the framework of the consultation according to paragraph 1 no agreement is reached on vocational training measures, the employer or the works council may refer the matter to the conciliation committee for mediation. The conciliation committee has to try to reconcile the parties.

(2) The employer and the works council have to ensure that employees are given an opportunity to participate in vocational training programmes inside or outside the establishment, having regard to the operational needs of the establishment. In this connection they also have to give due consideration to the interests of older employees, of part-time employees and of employees with family responsibilities.

##### **Section 97 Vocational training facilities and programmes**

(1) The employer has to consult the works council on the establishment and equipment of in-plant training facilities, the introduction of vocational training programmes in the establishment and participation in external vocational training programmes.

(2) If the employer has planned or implemented measures as a result of which the work of the employees concerned is changed and their vocational knowledge and skills are no longer sufficient to discharge their duties, the works council has to participate in the decisions relating to the implementation of vocational training programmes in the establishment. If no agreement is reached the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

### **Section 98**

#### **Implementation of vocational training in the establishment**

(1) The works council has to participate in the decisions relating to the implementation of vocational training programmes in the establishment.

(2) The works council may oppose the appointment of a training officer in the establishment or request his or her removal on the grounds that he or she lacks the necessary personal or technical qualifications and in particular the necessary knowledge of the teaching methods required to give training in the occupation and processes concerned within the meaning of the Vocational Training Act (Berufsbildungsgesetz) or is negligent in the performance of his or her duties.

(3) If the employer provides vocational training in the establishment or releases employees to enable them to participate in vocational training programmes outside the establishment or if he defrays all or part of the cost arising from such participation, the works council may propose employees or groups of employees of the establishment for participation in such vocational training.

(4) If no agreement is reached in the case covered by paragraph (1) or concerning the trainees proposed by the works council under paragraph (3), the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(5) If no agreement is reached in the case covered by paragraph (2), the works council may apply to the labour court for an order enjoining the employer to refrain from appointing or to recall the person concerned. If the employer proceeds with the appointment in violation of a mandatory court order, the labour court must, on the request of the works council, sentence him or her, after giving prior warning, to pay a fine on account of the appointment; the administrative fine is 10,000 euros. If the employer does not remove the training officer, thereby violating a mandatory court order, the labour court, on application by the works council, compels the employer to comply with the order by the imposition of fines; the maximum fine is 250 euros in respect of each day on which the violation continues. The foregoing are without prejudice to the provisions of the Vocational Training Act that relate to the organization of vocational training.

(6) Paragraphs (1) to (5) apply accordingly where the employer carries out other vocational training programmes in the establishment.

### **Subdivision Three**

#### **Individual staff measures**

### **Section 99**

#### **Co-determination in individual staff measures**

(1) In companies normally employing more than twenty employees with voting rights the employer has to notify the works council in advance of any recruitment, grading, regrading and transfer, submit to it the appropriate recruitment documents and in particular supply information on the persons concerned; he or she has to inform the works council of the implications of the measure envisaged, supply it with the necessary supporting documentation and obtain its consent to the measure envisaged. In the case of recruitments and transfers the employer must in particular supply information on the job and grading envisaged. Members of the works council have to refrain from divulging any information relating to the personal circumstances and private affairs of the employees concerned that

has come to their knowledge in connection with the staff movements referred to in sentence 1 and 2, where such information is of a confidential nature by reason of its implications or contents; section 79 (1) sentence 2 to 4 apply accordingly.

(2) The works council may refuse its consent in the following cases:

1. if the staff measure constitutes a breach of any Act, statutory instrument, safety regulation or stipulation of a collective agreement or works agreement, or of a court order or official instruction;
2. if the staff movement violates a guideline within the meaning of section 95;
3. if there is factual reason to assume that the staff measure is likely to result in the dismissal of or other prejudice to employees of the establishment not warranted by operational or personal reasons; in cases of permanent recruitment non-consideration of an equally suitable employee on a fixed term contract also considers a prejudice to that employee;
4. if the employee concerned suffers prejudice through the staff measure although this is not warranted by operational or personal reasons;
5. if the vacancy has not been notified in the establishment as required under section 93; or
6. if there is reason based on facts to assume that the applicant or employee envisaged for the staff movement would cause trouble in the establishment through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular through racist or xenophobic activities.

(3) If the works council refuses its consent, it has to notify the employer in writing, giving its reasons, within one week of being informed by the employer. If the works council fails to do so within the said time limit it is deemed to have given its consent.

(4) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent.

#### **Section 100 Temporary staff measures**

(1) The employer may, if this is urgently required for reasons based on facts, make a staff measure within the meaning of section 99 (1) sentence 1 on a temporary basis before the works council takes a stand or if it has refused its consent. In such cases the employer has to inform the employee concerned of the position in fact and in law.

(2) The employer has to immediately notify the works council of the temporary staff measure. If the works council contends the urgency of the action taken on grounds based on facts, it has to immediately report its objection to the employer. In such cases the employer may maintain the temporary staff measure only on condition that within three days he applies to the labour court for a decision in lieu of the consent of the works council and for a declaration stating that the action taken was urgently required for reasons based on facts.

(3) If the labour court by mandatory decision refuses to issue a decision in lieu of the works council's consent or if it hands down a final mandatory judgement to the effect that the action taken was manifestly not urgently required by reasons based on facts, the temporary staff measure is cancelled on the expiry of two weeks after the date on which the decision or judgement becomes operative. After that date it is unlawful to maintain the staff movement.

#### **Section 101 Fines**

If the employer carries out a staff measure within the meaning of section 99 (1) sentence 1 without the works council's consent or if he maintains a temporary staff measure in violation of section 100 (2) sentence 3 or paragraph (3) the works council may request the labour court to order the employer to rescind the staff measure. If the employer fails to rescind the

staff measure in violation of a mandatory court order, the labour court compels the employer to cancel the change by the imposition of fines on application by the works council. The maximum fine is 250 euros in respect of each day on which the violation continues.

## **Section 102**

### **Co-determination in the case of dismissal**

(1) The works council has to be consulted before every dismissal. The employer has to inform the works council about the reasons for dismissal. Any notice of dismissal that is given without consulting the works council is null and void.

(2) If the works council has objections to a dismissal with due notice, it has to notify the employer in writing within a week giving its reasons. If it does not report its objections within the said time limit, it is deemed to have given its consent to the dismissal. If the works council has objections against a dismissal without notice, it has to notify the employer in writing immediately and at any rate not later than within three days, giving its reasons. The works council is to consult the employee concerned before it takes a stand, in so far as this appears necessary. Section 99 (1) sentence 3 applies accordingly.

(3) The works council may oppose a dismissal with due notice within the time limit specified in paragraph (2) sentence 1 in the following cases:

1. if the employer in selecting the employee to be dismissed disregarded or did not take sufficient account of social aspects;
2. if the dismissal amounted to non-observance of a guideline covered by section 95;
3. if the employee whose dismissal is being envisaged could be kept on at another job in the same establishment or in another establishment of the same company;
4. if the employee could be kept on after a reasonable amount of retraining or further training; or
5. if the employee could be kept on after a change in the terms of his contract and he has indicated his agreement to such change.

(4) If the employer gives notice of dismissal although the works council has lodged objections to such dismissal under paragraph (3), it has to append a copy of the works council's point of view to the notice of dismissal sent to the employee.

(5) If the works council has lodged an objection to a routine dismissal within the period and in the manner prescribed and if the employee has brought an action under the Protection against Dismissal Act (Kündigungsschutzgesetz) for a declaration that the employment relationship has not been dissolved by the notice of dismissal, the employer is bound to keep the employee in his or her employment at the latter's request after expiry of the term of notice until a final decision is given on the case at issue; during such period he or she may not make any change in his or her conditions of work. On application by the employer the court may issue an interim order releasing him from his obligation under sentence 1 to maintain the employment relationship in the following cases:

1. if the action brought by the employee is not reasonably likely to succeed or appears abusive; or
2. the continuation of the employment relationship imposes an unreasonable financial burden on the employer; or
3. the objection raised by the works council is manifestly unfounded.

(6) The employer and the works council may make an agreement to the effect that any notice of dismissal requires the approval of the works council and that differences of opinion on whether a refusal of consent is justified are to be submitted to the decision of the conciliation committee.



(7) The foregoing is without prejudice to the regulations relating to the participation of the works council made under the Protection against Dismissal Act.

### **Section 103**

#### **Exceptional dismissal and transfer in special cases**

(1) The exceptional dismissal of a member of the works council, the youth and trainee delegation, the ship's committee and the fleet works council, the electoral board or of candidates for election requires the consent of the works council.

(2) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent if the exceptional dismissal is justified, all circumstances being taken into account. The employee concerned is a party to the proceedings in the labour court.

(2a) Paragraph 2 applies accordingly if the establishment does not have a works council.

(3) A transfer of the persons referred to in paragraph (1), which would result in the loss of an office or of eligibility, requires the approval of the works council; the foregoing does not apply if the employee concerned agrees to the transfer. Paragraph (2) applies accordingly subject to the proviso that the employer may apply to the labour court for a decision in lieu of consent if the transfer is warranted by important operational reasons, even with due regard to the position of the employee concerned under the Works Constitution Act.

### **Section 104**

#### **Removal of employees causing trouble in the establishment**

If an employee through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular, through racist or xenophobic activities, repeatedly causes serious trouble in the establishment, the works council may request the employer to dismiss or transfer him. If the labour court upholds an application by the works council to enjoin the employer to dismiss or transfer the said employee and the employer does not dismiss or transfer him in violation of a mandatory court order, the labour court, on application by the works council, has to compel the employer to comply with the order by the imposition of fines. The maximum fine is 250 euros in respect of each day on which the violation continues.

### **Section 105**

#### **Executive staff**

The works council is to be notified in good time of all prospective recruitments or staff movements affecting executive staff covered by section 5 (3).

### **Division Six**

#### **Financial matters**

#### **Subdivision One**

#### **Information on financial matters**

### **Section 106**

#### **Finance committee**

(1) A finance committee is to be established in all companies that normally have more than 100 permanent employees. It is the duty of the finance committee to consult with the employer on financial matters and report to the works council.

(2) The employer has to inform the finance committee in full and in good time of the financial affairs of the company and supply the relevant documentation in so far as there is no risk of disclosing the trade or business secrets of the company and demonstrate the implications for manpower planning. In the cases referred to in paragraph 3 no. 9a, the relevant documentation includes information regarding the potential acquirer and his/her intentions with respect to the company's future business activity and the resulting consequences for employees; the same applies in the case where a bidding process is conducted in the run-up to the takeover.

(3) The following, inter alia, are financial matters covered by this provision:

1. the economic and financial situation of the company;
2. production and marketing situation;
3. the production and investment programmes;
4. rationalisation plans;
5. production techniques and work methods, especially the introduction of new work methods;
- 5a. issues concerning the establishment's environmental policy;
6. the reduction of operations in or closure of establishments or parts of establishments;
7. the transfer of establishments or parts of establishments;
8. the amalgamation or split-up of establishments or parts of establishments;
9. changes in the organization or objectives of establishments;
- 9a. the takeover of the company, if control is thereby obtained, and
10. other circumstances and projects that may materially affect the interests of the employees of the company.

#### **Section 107**

##### **Appointment and composition of the finance committee**

(1) The finance committee consists of not less than three and not more than seven members, who are employees of the company and at least one of whom is a works council member. The executives referred to in section 5 (3) are also eligible for membership on the finance committee. The committee members should have the necessary technical and personal qualifications for their functions.

(2) The members of the finance committee are appointed by the works council for a period corresponding to its own term of office. Where a central works council has been established, the members of the finance committee are appointed by the said council; in this case the term of office of the committee members ends on the expiration date for the term of office of the majority of the members of the central works council who were entitled to participate in making the appointments. Members of the finance committee may be removed from office at any time; sentence 1 and 3 apply accordingly to removal from office.

(3) The works council may decide by majority vote of its members to assign the functions of the finance committee to a committee of the works council. The membership of such committee may not exceed the number of members of the works committee. The works council may, however, appoint additional employees including executive staff specified in section 5(3) to the committee but not more than the number of committee members; the decisions are to be taken in accordance with sentence 1. The additional employees referred to in sentence 3 are accordingly bound to secrecy in accordance with section 79. For amending or annulling decisions taken in accordance with sentence 1 to 3 the same majority is required as for the adoption of decisions under sentence 1 to 3. If a company has a central works council, the said council decides on the assignment of functions of the finance committee to other committees; sentence 1 to 5 apply accordingly.

#### **Section 108**

##### **Meetings**

(1) The finance committee is to meet once a month.

(2) The employer or his representative has to participate the meetings of the finance committee. He or she may be accompanied by competent employees of the company including members of the executive staff covered by section 5 (3). The participation of experts and their duty to observe professional secrecy are accordingly governed by section 80 (3) and (4).

(3) The members of the finance committee are entitled to access the documents to be submitted under section 106 (2).

(4) The finance committee is to give a full report on each meeting to the works council without delay.

(5) The annual balance sheet is to be explained to the finance committee in conjunction with the works council.

(6) Where the works council or central works council has decided to assign the functions of the finance committee to another committee, paragraphs (1) to (5) apply accordingly.

### **Section 109**

#### **Settlement of differences**

If despite a request from the finance committee information on financial matters as defined in section 106 is not furnished or not furnished in good time or if the information given is inadequate and if no agreement on the matter is reached between the employer and the works council, the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council. The conciliation committee may call in experts if it needs their evidence to reach a decision; section 80 (4) applies. Where the works council or the central works council has decided to assign the functions of the finance committee to another committee, sentence 1 applies accordingly.

### **Section 109a**

#### **Takeover**

In companies where no financial committee has been established, the works council is to be involved as stipulated in section 106 (1) and (2), in the case covered by section 106 (3) no. 9a; section 109 applies accordingly.

### **Section 110**

#### **Information of employees**

(1) In companies that normally have more than 1.000 permanent employees, the employer has to report to the staff in writing on the financial situation and progress of the company at least once every calendar quarter after prior coordination with the finance committee or the bodies referred to in section 107 (3) and the works council.

(2) The preceding paragraph also applies to companies that do not meet the conditions laid down in the preceding paragraph but normally have more than twenty permanent employees with voting rights, subject to the proviso that the employees of such companies may also be informed orally. If such company is under no obligation to set up a finance committee, the employees are informed after prior coordination with the works council.

### **Subdivision Two**

#### **Alterations**

### **Section 111**

#### **Alterations**

In companies that normally have more than twenty employees with voting rights the employer has to inform the works council in full and in good time of any proposed alterations which may entail substantial prejudice to the staff or a large sector thereof and consult the works council on the proposed alterations. In companies that have more than 300 employees, the works council may call on the advice of a consultant to support it; section 80 (4) applies accordingly; the foregoing is without prejudice to section 80 (3). The following are deemed as alterations for the purposes of sentence 1:

1. reduction of operations in or closure of the whole or important departments of the establishment;
2. transfer of the whole or important departments of the establishment;
3. the amalgamation with other establishments or split-up of establishments;
4. important changes in the organization, purpose or plant of the establishment;
5. introduction of entirely new work methods and production processes.

### **Section 112**

#### **Reconciliation of interests in the case of alterations; social compensation plan**

(1) If the employer and the works council reach an agreement to reconcile their interests in connection with the proposed alterations, the said agreement is to be recorded in writing and signed by the employer and the works council; section 77 (2) sentence 3 applies accordingly. The foregoing also applies to an agreement on full or part compensation for any financial prejudice sustained by staff as a result of the proposed alterations (social compensation plan). The social compensation plan has the effect of a works agreement. Section 77 (3) is not to be applied to the social compensation plan.

(2) If no reconciliation of interests can be achieved in connection with the proposed alterations or if no agreement is reached on the social compensation plan, the employer or the works council may apply to the Executive Board of the Federal Employment Agency for mediation, the Board may entrust other staff members of the Federal Employment Agency with this task. If mediation is not applied for or the attempt at mediation is unsuccessful, the employer or the works council may submit the case to the conciliation committee. The chairperson of the conciliation committee may request a member of the Executive Board of the Federal Employment Agency or a staff member of the Federal Employment Agency appointed by the Board to take part in the proceedings.

(3) The employer and the works council are to submit proposals to the conciliation committee for the settlement of differences on the reconciliation of interests and the social compensation plan. The conciliation committee has to attempt to reconcile the parties. If an agreement is reached, it has to be recorded in writing and signed by the parties and the chairperson.

(4) If no agreement is reached on the social compensation plan, the conciliation committee makes a decision on the drawing up of a social compensation plan. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(5) When making a decision pursuant to paragraph (4), the conciliation committee has to take into account the social interests of the employees concerned while taking care that its decision does not place an unreasonable financial burden on the company. In doing so and within the framework of equitable discretion, the conciliation committee has to be guided by the following principles, in particular:

1. When compensating in full or part any financial prejudices sustained, in particular by a reduction in income, the lapse of additional benefits or loss of entitlements to company pensions, removal costs or increased travelling costs, it is to provide for payments which generally make allowances for the circumstances of the individual case.
2. It has to take into account the prospects of the employees concerned on the labour market. It is to exclude from payments employees who may continue to work in reasonable employment in the same establishment or in another establishment of the company or of a company belonging to the combine, but refuse said continued employment; the possibility of continued employment at another location is not alone sufficient grounds for claiming unreasonableness.

- 2a. In particular, it is to duly consider the support schemes aimed at avoiding unemployment provided for in Book Three of the Social Code.
3. When calculating the total amount of the social compensation plan payments, it has to take care that the continuance of the company or the jobs remaining after the implementation of the alterations is not jeopardised.

#### **Section 112a**

#### **Enforceable social compensation plan in the event of staff cutbacks, establishment of new businesses**

(1) Where a planned alteration to the establishment in accordance with section 111 sentence 3 no. 1 consists only in a reduction of staff, section 112 (4) and (5) only applies if the following numbers of employees are to be dismissed for operational reasons:

1. In establishments with normally less than 60 employees, 20 % of the regularly employed employees, but not less than 6 employees;
2. In establishments with normally more than 60 and less than 250 employees, 20 % of the regularly employed employees or not less than 37 employees;
3. In establishments with normally more than 250 and less than 500 employees, 15% of the regularly employed employees or not less than 60 employees;
4. In establishments with normally more than 500 employees, 10 % of the regularly employed employees, but not less than 60 employees.

The leaving of employees on the basis of contract cancellation, occasioned by the employer due to reasons of alteration within the establishment, also counts as dismissal.

(2) Section 112 (4) and (5) does not apply to establishments of a company in the first four years of its existence. This does not apply to new businesses set up in conjunction with the legal restructuring of companies and combines. The start of gainful activity, of which the tax office is to be notified in accordance with section 138 of the Tax Code, is authoritative for the time of establishment.

#### **Section 113**

#### **Indemnities**

(1) If the employer fails to comply with an agreement on the reconciliation of interests in connection with the alterations proposed without any compelling reasons to do so, the employees who are dismissed as a result of such non-compliance may bring an action in the labour court requesting that the employer should be condemned to pay indemnities; section 10 of the Protection against Dismissal Act applies accordingly.

(2) If employees sustain other financial prejudice as a result of a non-compliance covered by paragraph (1), the employer is to make good such prejudice for a period not exceeding twelve months.

(3) Paragraphs (1) and (2) apply accordingly where the employer carries out any proposed alterations within the meaning of section 111 without having attempted to reach an agreement with the works council on a reconciliation of interests and such action results in dismissals or other financial prejudice to employees.

#### **Part Five**

#### **Special regulations for particular types of establishments**

#### **Division One**

#### **Maritime Shipping**

#### **Section 114**

#### **Basic principles**

- (1) This Act applies to shipping companies and their fleets insofar as this Division does not contain anything to the contrary.
- (2) In this Act the term “shipping company” means a company engaged in merchant shipping and having its head office within the territorial scope of this Act. A person is also deemed to operate a shipping company within the meaning of this Division if he or she operates ships for profit by ocean trading as a corresponding shipowner, charterer, ship’s chandler or on the basis of a similar legal relationship and is the employer of the master and crew or predominantly exercises the functions of an employer.
- (3) A shipping fleet within the meaning of this Act is deemed to comprise all of the ships operated by a shipping company including those covered by paragraph (2) sentence 2.
- (4) In this Act the term “ship” means any merchant vessel flying the flag of the Federal Republic in virtue of the Law of the Flag Act. Ships which normally return to the base of a shore establishment within twenty-four hours of leaving port are treated as a part of such shore establishment of the shipping company.
- (5) Only shore establishments of shipping companies have youth and trainee delegations.
- (6) In this Act the term “crew members” means the persons, with the exception of the master, who are in an engagement or vocational training relationship with a shipping company and who are employed in the shipping fleet. Only the master is deemed to be a member of the executive staff within the meaning of section 5 (3) of this Act.

#### **Section 115** **Ship’s committee**

- (1) A ship’s committee is to be established on board every ship that normally has five crew members with voting rights, including three who are eligible. Unless this Act or other statutory instruments provide to the contrary, the provisions relating to the rights and obligations of the works council and the legal status of its members also has to apply to ships’ committees.
- (2) The provisions relating to the election and composition of works councils apply with the following modifications:
1. All members of the ship’s crew have voting rights.
  2. All members of the ship’s crew who are 18 years of age or over on the day of election and have served for not less than one year as crew members on board a ship flying the flag of the Federal Republic in virtue of the Law of the Flag Act are eligible to the ship’s committee. Section 8 (1) sentence 3 continues to apply.
  3. The membership of the ship’s committee is as follows, according to the normal manning of the vessel:
    - 5 to 20 crew members with voting rights: 1 person
    - 21 to 75 crew members with voting rights: 3 members
    - Over 75 crew members with voting rights: 5 members
  4. (cancelled)
  5. 13 (1) and (3) does not apply. In the conditions listed in section 13 (2), no. (2) to (5), a new ship’s committee is to be elected before the term of office of the incumbent committee expires.
  6. The crew members with voting rights may decide by majority vote to hold an election to the ship’s committee within twenty-four hours.
  7. The period referred to in section 16 (1) sentence 1 is to be reduced to two weeks and the period referred to in section 16 (2) sentence 1 to one week.



8. If the incumbent ship's committee does not appoint an electoral board in good time or if there is no ship's committee, the electoral board is appointed by the majority of crew members attending a crew meeting, section 17 (3) applies accordingly. If a crew meeting cannot be held because it would interfere with the smooth running of the ship, the master may appoint the electoral board at the request of three persons with voting rights. If the master fails to appoint the electoral board, the fleet works council is entitled to do so in his stead. The foregoing is without prejudice to the provisions relating to the appointment of the electoral board by the labour court.
  9. In respect of crew members on board ship the period within which an election may be contested runs from the date on which the vessel enters, for the first time after the election results have been announced, a port of call located within the territorial scope of this Act or in which there is a seamen's tribunal. The contestation of an election may also be placed on record with the seamen's tribunal. If the election to the ship's committee is contested, the seamen's tribunal seizes the election records on board. The seamen's tribunal has to immediately transmit the declaration of contestation and the election records seized to the labour court competent to deal with the contestation.
- (3) The term of office of the ship's committee is governed by sections 21, 22 to 25, except that
1. the term of office is one year;
  2. of the ship's committee also expires on the termination of the crew member's service on board, unless he or she resumes service on board before the expiry of the term of office under the preceding no..
- (4) The conduct of business of the ship's committee is governed by sections 26 to 36, 37 (1) to (3) and sections 39 to 41 accordingly. Section 40 (2) applies with the additional proviso that the ship's committee may also make use of the telecommunication facilities between the ship and the shore office for the rapid transmission of news in so far as its activities so require.
- (5) Sections 42 to 46 relating to the works meeting apply accordingly to the meetings held by the members of the ship's crew (crew meeting). At the request of the crew meeting the master gives a report on the ship's voyage and related matters. He or she answers questions concerning the operation of the ship, the voyage and safety on board.
- (6) Sections 47 to 59 relating to the central works council and the combine works council do not apply to the ship's committee.
- (7) Sections 74 to 105 relating to collaboration by employees and co-determination apply to the ship's committee with the following modifications:
1. The ship's committee is competent to deal with the matters in respect of which this Act provides for collaboration and co-determination by the works council in so far as they concern the ship's operations or the members of the ship's crew and are subject to the master's decision under statutory regulations or by virtue of the authority delegated to him or her by the shipowner.
  2. Where the master and the ship's committee fail to reach an agreement on a matter which is subject to the ship's committee's collaboration or co-determination, the ship's committee may refer the matter to the fleet works council. The fleet works council informs the ship's committee on any further action taken on the matter. The ship's committee and the master may apply to the conciliation committee or the labour court only where no fleet works council has been elected.
  3. The ship's committee and the master may conclude "ship's agreements" within the scope of their competence. The provisions relating to works agreements apply accordingly to ship's agreements. No ship's agreements is to be made on any

matter that is the subject of a works agreement between the fleet works council and the employer.

4. The master may take temporary arrangements on matters that are subject to the codetermination of the ship's committee even before an agreement has been reached with the ship's committee if such arrangements are urgently necessary to maintain the smooth operation of the ship. The crew members affected are to be informed of the temporary nature of the arrangement. In as far as the final arrangement differs from the temporary arrangement, the shipping company makes good any prejudice incurred by crew members as a result of the temporary arrangement.
5. The ship's committee is entitled to be fully and regularly briefed on the ship's operations. The ship's committee is to be supplied with the relevant documentation. The term "ship's operations" is deemed to include, inter alia, safety on board, routes and voyages, prospective times of arrival and departure and the cargo to be carried on board.
6. The master grants at its request the ship's committee access to the ship's log books kept on board. Where the master has made an entry on matters that are subject to the collaboration or co-determination of the ship's committee, the latter may request a copy of the entry and enter comments into the ship's log. Where no agreement has been reached between the master and the ship's committee on a matter that is subject to the collaboration or co-determination of the ship's committee, the latter may make an entry to this effect into the ship's log and request a copy of such entry.
7. The competence of the ship's committee in occupational safety and health matters extends to the safety of the ship and collaboration with the competent authorities and other bodies concerned.

#### **Section 116** **Fleet works council**

(1) Fleet works councils are elected in fleets. The provisions relating to the rights and obligations of the works council and the legal status of its members also apply to the fleet works council, except in so far as this act or other statutory instruments provide to the contrary.

(2) The provisions relating to the election, composition and term of office of works councils apply with the following modifications:

1. All crew members in the employment of the shipping company have voting rights in respect of the fleet works council.
2. Eligibility to the fleet works council is governed by section 8 with the following exceptions:
  - a) In shipping companies with a fleet of more than eight ships or a payroll of normally more than 250 crew members, a crew member to be eligible must fulfil the conditions for eligibility laid down in section 115 (2) no. 2.
  - b) In cases which do not meet the conditions laid down in letter (a) only such employees are eligible as fulfil the conditions for eligibility in the shore office of the shipping company in application of section 8, unless the employer agrees to the election of crew members.
3. The membership of the fleet works council is as follows, according to the number of crew members with voting rights normally employed in the fleet:

5 to 400 crew members with voting rights: 1 person

401 to 800 crew members with voting rights: 3 members

Over 800 crew members with voting rights: 5 members

4. To be valid, a list of candidates must be signed by at least three crew members with voting rights if section 14 (4) sentence 1 clause 1 and sentence 2 are applicable.
5. Section 14a does not apply.
6. The time limit referred to in section 16 (1) sentence 1 is to be extended to three months and the time limit referred to in section 16 (2) sentence 1 is to be extended to two months.
7. Employees of the shore office of the shipping company may also be appointed to the electoral board. Section 17 (2) to (4) do not apply. If no fleet works council exists, the central works council or, if inexistent, the combine works council appoints the electoral board. If an establishment has no central works council or combine works council, the electoral board is appointed jointly by the employer and the trade unions represented in the fleet. The same applies if the central works council or combine works council fails to appoint the electoral board as stipulated in sentence 3. If no agreement is reached between the employer and the trade unions, the electoral board is appointed by the labour court on application from the employer or a trade union represented in the fleet or at least three crew members with voting rights. Section 16 (2) sentence 2 and 3 apply accordingly.
8. In respect of crew members on board ship the period within which an election may be contested in application of section 19 (2) run as from the date on which the ship enters, for the first time after the election results have been announced, a port of call that is located within the territorial scope of this Act or in which there is a seamen's tribunal. A contestation of an election ceases to be receivable on the expiry of three months after the election results have been announced. The contestation of an election may also be placed on record with the seamen's tribunal. The seamen's tribunal immediately transmits the declaration of contestation to the labour court competent to deal with the contestation.
9. If the fleet works council consists of crew members, a member of the fleet works council who ceases to be a crew member also ceases to be a member of the fleet works council. The fact of holding office on the fleet works council or an employment covered by no. 2 of paragraph (3) below may not affect a person's status as crew member.

(3) Sections 26 to 41 relating to the conduct of business of the works council applies to the fleet works council with the following modifications:

1. In matters in respect of which the fleet works council must take a stand within a specified time limit under this Act, the fleet works council may, notwithstanding section 33 (2), take a decision irrespective of the number of members present at the meeting, on condition that the members have been convened in the manner prescribed.
2. To the extent that members of the fleet works council cannot be released from their work duties, they are to be assigned tasks that do not interfere with the discharge of their duties on the fleet works council. The job assigned are to be in keeping with the capacity and skills of the member of the fleet works council and with his or her previous post. The job to be assigned is determined in agreement with the fleet works council. If no agreement is reached on the assignment of the job the matter is

decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the fleet works council.

3. Crew members who serve on the fleet works council are to continue to receive their seamen's pay even if they are employed in the shore office. Benefits in kind are to be compensated at an appropriate rate. If the new job ranks higher than the previous job, the remuneration paid has to be that which corresponds to the new job.
  4. Where the workplace is located outside the place of residence an arrangement which should take account of local conditions is to be made between the fleet works council and the employer as to the accommodation of the crew members elected to the fleet works council. If no agreement is reached the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the fleet works council.
  5. The fleet works council has the right to board any ship of the fleet, perform its duties while on board and attend the meetings of the ship's committee. Section 115 (7) no. 5 sentence 1 applies accordingly.
  6. While a ship is berthed in a port located within the territorial scope of this Act, the fleet works council may, after notifying the master, appoint hours for consultation aboard and call crew meetings on board.
  7. If the ship does not call at a port located within the territorial scope of this Act within a calendar year, no. 5 and 6 apply to European ports. The locks of the Kiel Canal are not considered as ports.
  8. Notwithstanding no. 6 and 7 consultation hours and crew meetings may also be held in other ports of call, in cases of urgent need, if the employer agrees. If no agreement is reached the matter is decided by the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the fleet works council.
- (4) Sections 42 to 46 relating to works meetings do not apply to fleets.  
(5) The tasks, powers and duties conferred on the works council under sections 47 to 59 are exercised by the fleet works council in respect of the fleet.  
(6) Sections 74 to 113 relating to collaboration by employees and co-determination apply to the fleet works council with the following modifications:

1. The fleet works council is competent to deal with the matters in respect of which this Act provides for collaboration or co-determination by the works council in so far as such matters –
  - a) concern the whole fleet or two or more ships of the fleet or the crew members of the whole fleet or of two or more ships of the fleet;
  - b) have been referred to it by the ship's committee under section 115 (7) no. 2; or
  - c) do not fall within the competence of the ship's committee under section 115 (7) no. 1.
2. The fleet works council is to be kept fully and regularly informed on the shipping movements of the shipping company. It is to be supplied with the relevant documentation.

**Division Two**  
**Aviation**  
**Section 117**  
**Application to aviation**

(1) This Act applies to the ground establishments of aviation companies. This Act applies to the flight personnel of aviation companies if a body representing them has not been set up by collective agreement in accordance with paragraph (2) sentence 1.

(2) A body representing the flight personnel of aviation companies may be set up by collective agreement. The collective agreement may derogate from this Act with respect to the collaboration of such body with the bodies to be established under this Act for the representation of the employees of the ground establishments of the aviation company. Section 4 (5) of the Collective Agreements Act (Tarifvertragsgesetz) applies to a collective agreement in accordance with sentence 1 and 2.

**Division Three**  
**Establishments for political, religious, charitable and other purposes; religious communities**

**Section 118**

**Application to ideological establishments and religious communities**

(1) The provisions of this Act do not apply to companies and establishments that directly and predominantly

1. pursue political, coalition, religious, charitable, educational, scientific or artistic objectives; or
2. serve purposes of publishing or expressing opinions covered by section 5 (1) sentence 2 of the Basic Law

in so far as their application would not be in keeping with the specific nature of the company or establishment. In such cases sections 106 to 110 do not apply and sections 111 to 113 apply only in so far as they provide for the full or part compensation of employees for any financial prejudice sustained as a result of alterations.

(2) This Act does not apply to religious communities or to their charitable and educational institutions irrespective of their legal form.

**Part Six**  
**Offences punishable by imprisonment or fines**

**Section 119**

**Offences against bodies established under this Act and their members**

(1) The following offences are punishable by a term of imprisonment not exceeding one year or a fine:

1. interfering with an election to the works council, the youth and trainee delegation, the ship's committee, the fleet works council or the representative bodies of the employees referred to in section 3 (1) no. 1 to 3 or 5, or influencing such elections by inflicting or threatening reprisals or granting or promising incentives,
2. obstructing or interfering with the activities of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, the arbitration body referred to in section 76 (8), the grievance committee referred to in section 86 or the finance committee, or
3. prejudicing or favouring a member or substitute member of the works council, the central works council, the combine works council, the youth and trainee delegation, the central youth and trainee delegation, the combine youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the conciliation committee, the arbitration

body referred to in section 76 (8), the grievance committee referred to in section 86 or the finance committee or personnel providing information referred to in section 80 (2) sentence 4 by reason of his office.

(2) Proceedings concerning the offence are instituted only on application by the works council, the central works council, the combine works council, the ship's committee, the fleet works council, the representative bodies of the employees referred to in section 3 (1), the electoral board, the employer or a trade union represented in the establishment.

### **Section 120** **Breach of secrecy**

(1) Any person who, without being authorised to do so, divulges a third party's trade or business secret which the employer has expressly stated to be confidential and that has come to his knowledge while serving as

1. a member or substitute member of the works council or one of the bodies referred to in section 79 (2),
2. a representative of a trade union or employers' association,
3. an expert who has been called in by the works council under section 80 (3) or consulted by the conciliation committee under section 109 sentence 3,
- 3a. a consultant retained by the works council under section 111 sentence 2,
- 3b. personnel providing information to the works council in accordance with section 80 (2) sentence 4,
4. an employee who has been called in by the works council in accordance with section 107 (3) sentence 3 or by the finance committee under section 108 (2) sentence 2 is liable to a term of imprisonment of up to one year or a fine.

(2) A similar penalty is imposed on any person who without being authorised to do so divulges an employee's secret and specifically a personal secret which has come to his or her knowledge while he or she was serving as a member or substitute member of the works council or one of the bodies referred to in section 79 (2) and in respect of which he or she is bound to secrecy under the provisions of this Act.

(3) Where an offender has acted for reward or with the intention of obtaining some advantage for himself or herself or another person or of harming any other person, the penalty is a term of imprisonment of up to two years or a fine. A similar penalty is imposed on any person who, without being authorised to do so, exploits a third party's secret and specifically a trade or business secret in respect of which he or she is bound to secrecy under the provisions of paragraphs 1 or 2.

(4) Paragraphs (1) to (3) are also applicable if the offender divulges or exploits the third party secret after the death of the person concerned.

(5) Proceedings for the offence are instituted only on application by the injured party. If the injured party dies, the right to apply passes to the relatives in accordance with section 77 (2) of the Criminal Code insofar as the secret belongs to the personal sphere of the injured party; in all other cases it passes to the heirs. Where the offender divulges the secret after the death of the party concerned, sentence 2 applies accordingly.

### **Section 121** **Provisions on administrative fines**

(1) Any person who fails to comply with the obligation to supply information referred to in section 90 (1) and of section 90 (2) sentence 1, section 92 (1) sentence 1, also in connection with paragraph (3), section 99 (1), section 106 (2), section 108 (5), section 110 or 111, or fails to supply such information truthfully, completely or at the proper time is deemed to have committed a minor offence.



(2) Minor offences may be punished by an administrative fine not exceeding 10,000 euros.

**Part Seven  
Amendment of other laws**

**Section 122  
(Amendment to the Civil Code)**

(obsolete)

**Section 123  
(Amendment to the Protection against Dismissal Act)**

(obsolete)

**Section 124  
(Amendment to the Labour Courts Act)**

(obsolete)

**Part Eight  
Transitional and final provisions**

**Section 125  
First elections under this Act**

(1) The first elections to works councils in accordance with section 13 (1) are to be held in 1972.

(2) The first elections to youth and trainee delegations in accordance with section 64 (1) sentence 1 are to be held in 1988. The term of office of the youth delegation ends with the announcement of the election results of the newly elected youth and trainee delegation, at the latest on 30 November 1988.

(3) The elections of the works council, the ship's committee, the fleet works council and the youth and trainee delegation which are initiated later than 28 July, 2001, are governed by the First Ordinance for the Implementation of the Works Constitution Act of 16 January 1972 (Federal Gazette, Part I p. 49), last amended by the ordinance of 16 January 1995 (Federal Gazette, Part I, p. 43), the Second Ordinance for the Implementation of the Works Constitution Act of 24 October 1972 (Federal Gazette Part I, p. 2029), last amended by the ordinance of 28 September 1989 (Federal Gazette, Part I, p. 1795), and the Ordinance for the Performance of the Works Council Elections in the post establishments of 26 June 1995 (Federal Gazette, Part I, p. 871) accordingly until amendment thereof.

(4) In addition, the First Ordinance for the Implementation of the Works Constitution Act, until amended, applies accordingly to the simplified electoral procedure under section 14a subject to the following proviso:

1. The time period for the invitation to the election meeting where the electoral board is to be elected in accordance with section 14a (1) of the Act is to be not shorter than seven days. The invitation includes the place, day, and time of the election meeting as well as the information that lists of candidates for the works council elections may be submitted until the end of the election meeting (Section 14a (2) of the Act).
2. Section 3 applies with the following proviso:
  - a) If section 14a (1) of the Act is applicable, the electoral board adopts the declaration of the election at the election meeting. The time limit for raising objections under section 3 (2), no. 3 is to be reduced to three days. The information provided under section 3 (2) no. 4 includes the minimum number of seats of the minority gender (section 15 (2) of the Act). The lists of candidates are not submitted as stipulated in section 3 (2) no. 7, but are to be submitted to the electoral board until the end of the election meeting for the election of the electoral board. In addition to section 3 (2) no. 10, the electoral board specifies

the place, day, and time of subsequent casting of votes (section 14a (4) of the Act).

- b) If section 14a (3) of the Act is applicable, the electoral board immediately adopts the declaration of the election subject to the restrictions concerning section 3 (2) no. 3, 4, and 10 listed under letter a). In derogation of section 3 (2) no. 7, the lists of candidates is submitted to the electoral board not later than one week prior to the election meeting in which the works council will be elected (section 14a (3) sentence 2 of the Act).
3. The time limit for raising objections under section 4 (1) is reduced to three days.
4. Sections 6 to 8 and section 10 (2) apply accordingly with the modification that the elections are to be held on the basis of lists of candidates. If section 14a (1) of the Act is applicable, the lists of candidates are to be submitted to the electoral board until the end of the election meeting in which the electoral board is elected; if section 14a (3) of the Act is applicable, the lists of candidates are submitted to the electoral board not later than one week prior to the election meeting for the election of the works council (section 14a (3) sentence 2 of the Act).
5. Section 9 does not apply.
6. Sections 21 ff apply accordingly to the electoral procedure. The candidates are listed on the ballot papers in alphabetical order including their surname, first name, and type of occupation in the establishment.
7. Section 25 (5) to (8) does not apply.
8. Section 26 (1) applies subject to the proviso that a person entitled to vote have to have informed the electoral board of his request for a written note not later than three days prior to the date of the election meeting in which the works council is elected.
9. Section 31 applies accordingly with the modification that the election of the youth and trainee delegation is held on the basis of lists of candidates.

### **Section 126**

#### **Authorisation to make rules for the elections**

The Federal Minister of Labour and Social Affairs is hereby authorised to issue ordinances with the approval of the Bundesrat regulating the electoral procedure for the elections referred to in sections 7 to 20, 60 to 63, 115 and 116 concerning –

1. the preparation of elections, including in particular the establishment of voters' lists and the calculation of the number of representatives;
2. the time limit for inspection of voters' lists and for raising objections to them;
3. the lists of candidates and the time limits for their submission;
4. the declaration of the election and the time limit for its announcement;
5. the casting of votes;
- 5a. the allocation of seats in the works council, the ship's committee, the fleet works council and the youth and trainee delegation to the genders, even if the seats cannot be filled as stipulated in section 15 (2) and section 62 (3).
6. the determination of election results and the time limits for their announcement;
7. the safekeeping of election documents.

**Section 127**  
**References**

Any reference in other enactments to provisions repealed or amended by this Act is to be construed as references to the corresponding provisions of this Act, and any expressions used in other enactments and amended by this Act are replaced by the corresponding expressions in this Act.

**Section 128**

**Existing collective agreements containing provisions contrary to this Act**

Any collective agreements concluded under section 20 (3) of the Works Constitution Act of 11 October 1952 that are operative on the date of commencement of this Act and provide for the setting up of some other body representing the employees in establishments of such character that there are particular difficulties in setting up works councils are not to be affected by this Act.

**Section 129**

**Special provisions on the occasion of the COVID 19 pandemic**

(1) Meetings in accordance with sections 42, 53 and 71 can be carried out also through audiovisual media by the end of 7 April 2023 if it can be ensured that only entitled persons can attend the meeting to take cognizance of the content of the meeting. The recording of the meeting is not permissible.

(2) Participation in meetings of the conciliation committee and the decision-making may also be carried out by means of a video or telephone conference until the end of 7 April 2023 if it can be ensured that third persons cannot take cognizance of the content of the meeting. A recording of the meeting is not permissible. Participants who participate in a meeting through a video or telephone conference confirm their presence vis-à-vis the chair of the conciliation committee in writing.

(3) (deleted)

**Section 130**  
**Civil service**

This Act does not apply to the administrative organs and establishments of the Federal Republic, the Länder, the municipalities and other public corporations, institutions and foundations.

**Section 131**  
**(Berlin no.)**

(obsolete)

**Section 132**  
**(Entry into force)**